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Presidential Documents

Title 3—

The President

Presidential Determination No. 2002–11 of March 20, 2002

Cooperation by Vietnam in Accounting for United States Prisoners of War and Missing in Action

Memorandum for the Secretary of State

As provided in section 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2002, Public Law 107–77, and laws referenced therein, I hereby determine, based on all information available to the United States Government, that the Government of the Socialist Republic of Vietnam is fully cooperating in good faith with the United States in the following four areas related to achieving the fullest possible accounting for Americans unaccounted for as a result of the Vietnam War:

1) resolving discrepancy cases, live sightings, and field activities;
2) recovering and repatriating American remains;
3) accelerating efforts to provide documents that will help lead to the fullest possible accounting of prisoners of war and missing in action (POW/MIAs); and
4) providing further assistance in implementing trilateral investigations with Laos.

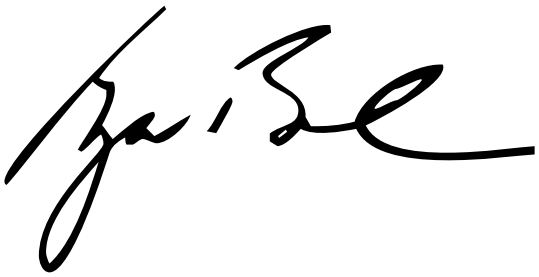
I further determine that the appropriate laboratories associated with POW/MIA accounting are thoroughly analyzing remains, material, and other information and fulfilling their responsibilities as set forth in subsection (B) of section 609 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, which is incorporated by reference in section 610.

The Department of Justice has advised that section 610 is unconstitutional because it purports to use a condition on appropriations as a means to direct my execution of responsibilities that the Constitution commits exclusively to the President. I am providing this determination as a matter of comity, while reserving the position that the condition enacted in section 610 is unconstitutional.

In making this determination, I have taken into account all information available to the United States Government as reported to me, the full range of ongoing accounting activities in Vietnam, including joint and unilateral Vietnamese efforts, and the concrete results we have attained as a result. As we look to further strengthen cooperation, Vietnam's unilateral provision of POW/MIA-related documents and records should be improved, focused initially on archival data pertaining to Americans captured, missing, or killed in areas of Laos and Cambodia under wartime Vietnamese control. Vietnam should also focus greater attention on locating and providing information on discrepancy cases, with priority on those last known alive in captivity or in immediate proximity to capture, and to locating and repatriating the remains of those who died while in Vietnamese control that have not yet been returned.

Finally, in making this determination, I wish to reaffirm my continuing personal commitment to the entire POW/MIA community, especially to the immediate families, relatives, friends, and supporters of these brave individuals, and to reconfirm that achieving the fullest possible accounting of our prisoners of war and missing in action remains one of the most important priorities in our relations with Vietnam.

You are authorized and directed to report this determination to the appropriate committees of the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 20, 2002.

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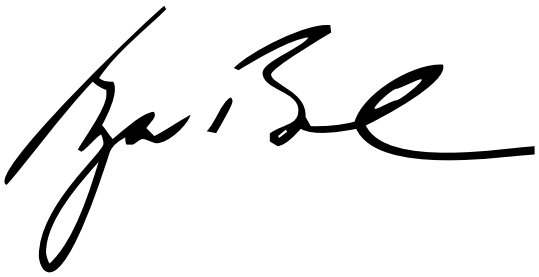

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Washington, March 20, 2002.

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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment

AGENCY: Farm Service Agency, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice announces that a direct final rule entitled Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment (Burley Warehouse Designations) published by the Farm Service Agency will take effect without change.

DATES: The direct final rule was effective on February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Ann Wortham at (202) 720–2715, or via electronic mail at *ann_wortham@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Farm Service Agency (FSA) published a direct final rule entitled Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment on January 4, 2002 (67 FR 481) to amend the regulations at 7 CFR 1464 governing the marketing of tobacco. The rule stipulated that its provisions would be effective February 4, 2002, unless adverse comments were received. The Agency received no adverse comments. Accordingly, this notice announces that its provisions have taken effect without change.

To expedite the necessary changes in the event of adverse comments being received on the direct final rule, a proposed rule also entitled Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment, proposing the same changes as in the direct final rule was also published on January 4, 2002 (67 FR 526). If adverse comments had been received on either the direct final or proposed rule, the proposed rule would have been the operative document and the Agency would have addressed the comments and ultimately published a final rule. The Agency received no adverse comments. Consequently, since the direct final rule will take effect, FSA will take no further action on the proposed rule.

All comments received will be maintained as public records. Requests to view comments received on either the direct final or the proposed rule may be made by contacting FSA at the number provided above.

Signed at Washington, D.C. on March 20, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–7560 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191

[T.D. 02–14]

Technical Amendments to the Customs Regulations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections to various authority citations to reflect amendments to the Harmonized Tariff Schedule of the United States implementing the United States-Jordan Free Trade Area Implementation Act, signed September 28, 2001.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings, (202) 927–1415.

SUPPLEMENTARY INFORMATION:

Background

In Chapter I of the Customs Regulations (19 CFR chapter I) there are many general and specific authority citations and some sections that reference certain General Note provisions of the Harmonized Tariff Schedule of the United States (HTSUS).

On September 28, 2001, the United States-Jordan Free Trade Area Implementation Act was signed into law (Pub. L. 107–43, 115 Stat. 243, 19 U.S.C. 2112 note). To implement the provisions of this Act, on December 7, 2001, the President issued Proclamation 7512 (66 FR 64497), the Annex of which modified the HTSUS by, among other things, adding a new General Note and redesignating the General Notes of the HTSUS that followed this addition. Specifically, a new HTSUS General Note 18 was added and HTSUS General Notes 18–23 were redesignated as HTSUS General Notes 19–24, respectively.

Because of the redesignation of General Notes in the HTSUS, the general and specific authority citations and sections in the Customs Regulations that reference certain General Note provisions are no longer accurate.

This document corrects General Note references in 25 parts and in 3 sections of the Customs Regulations (19 CFR parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191, and §§ 24.23, 141.4, and 152.13) to reflect the modification of the HTSUS set forth in Presidential Proclamation 7512.

Inapplicability of Public Notice and Comment Requirement and Delayed Effective Date Requirement

Because these amendments merely correct certain authority citation referencing errors in the Customs Regulations, pursuant to 5 U.S.C. 553(b)(B), Customs finds that good cause exists for dispensing with notice and public procedure as unnecessary. For these same reasons, pursuant to 5 U.S.C. 553(d)(3), Customs finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings.

Amendments to the Regulations

Chapter I of the Customs Regulations (19 CFR chapter I) is amended as set forth below:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

PART 11—PACKING AND STAMPING; MARKING

1. The authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Notes 23 and 24, Harmonized Tariff Schedule of the United States), 1624.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for part 18 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. In § 24.23, the reference in paragraph (c)(1)(v) to ''General Note 18, HTSUS'' is removed and added, in its place, is the reference ''General Note 19, HTSUS''.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The authority citation for part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23; Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

PART 111—CUSTOMS BROKERS

1. The general authority citation for part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

PART 114—CARNETS

1. The authority citation for part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

PART 128—EXPRESS CONSIGNMENTS

1. The authority citation for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

PART 132—QUOTAS

1. The general authority citation for part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * * *

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1304, 1624.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues, and the specific authority for § 141.4 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 19; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Note 4, Harmonized Tariff Schedule of the United States), 1498;

* * * * *

§ 141.4 [Amended]

2. In § 141.4:

a. The reference in paragraph (b)(1) to ''General Note 18'' is removed and added, in its place, is the reference ''General Note 19''; and

b. The reference in the introductory text of paragraph (c) to ''General Note 18(e)'' is removed and added, in its

place, is the reference ''General Note 19(e)''.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 146—FOREIGN TRADE ZONES

1. The authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 23, Harmonized Tariff Schedule of the United States);

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The general authority citation for part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 23 and 24, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The general authority citation for part 152 continues, and the specific authority for § 152.13 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624.

* * * * *

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)).

§ 152.13 [Amended]

2. In § 152.13:

a. The reference in paragraphs (b)(1) and (b)(2) to ''General Note 19'' is removed and added, in its place, is the reference ''General Note 20'';

b. The reference in the introductory text of paragraph (c) and in paragraphs (c)(1), (c)(2), and (c)(3) to ''General Note 19'' is removed and added, in its place, is the reference ''General Note 20''; and

c. The references in paragraph (d) to ''General Note 19'' are removed and added, in their place, are the references ''General Note 20''.

PART 177—ADMINISTRATIVE RULINGS

1. The general authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The authority citation for part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314.

PART 191—DRAWBACK

1. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

Dated: March 25, 2002.

Douglas M. Browning,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–7532 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Parts 123 and 125

[Public Notice 3954]

International Traffic in Arms Regulations; Exemptions for U.S. Institutions of Higher Learning

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by establishing an exemption for accredited U.S. institutions of higher learning from obtaining a license for the permanent export, temporary export, and temporary import of most articles fabricated only for fundamental research purposes covered by Category XV(a) or (e) of the U.S. Munitions List. Consistent with the current exemption found in the regulations on registration of manufacturers and exporters, registration is not required for use of these exemptions.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: David C. Trimble, Director, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Following the March 1999 transfer of commercial communications satellites to the USML required by the National Defense Authorization Act Fiscal Year 1999, some parts of the academic community expressed concern about potential government restriction on disclosure of information in university classrooms by virtue of the application of the International Traffic in Arms Regulations (''ITAR''). The March 1999 transfer of licensing jurisdiction back to State affected only commercial communications satellites and did not affect the continuation of the Department's longstanding jurisdiction over research, experimental, and scientific satellites. To clarify any underlying concerns of the universities, the Department worked with the Office of Science and Technology Policy, the Department of Defense, the National Oceanic and Atmospheric Administration, and the National Aeronautics and Space Administration. The exemptions herein address these concerns and are designed to facilitate the conduct of university-based space research and are fully consistent with the Department's longstanding policy of not regulating fundamental research.

Consistent with NSDD 189 (National Policy on the Transfer of Scientific, Technical and Engineering Information), the Department does not regulate fundamental research and the March 1999 transfer of commercial communications satellites to the USML did not change this policy. Similar concerns that the State Department might regulate academic exchanges of information under the ITAR generated considerable debate in the late 1970s and early 1980s. In response thereto, the State Department published revisions to the ITAR in December 1984, which specifically noted that concern had been expressed that the ITAR could be read in an overbroad manner to encompass exchanges of information in a purely academic setting. See Revisions to the International Traffic in Arms Regulations, Supplementary Information, 49 FR 47683 (Dec. 6, 1984). The Department acknowledged these concerns and took steps to alleviate them. Since 1984, the ITAR has been amended in order to indicate more clearly that publicly available information and academic exchanges

are not treated as controlled technical data.

Most notably, 22 CFR 122.1(b)(4) specifically exempts from the registration requirements of the ITAR ''persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.'' Further, specifically exempted from the definition of technical data is ''information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges, and universities,'' 22 CFR 120.10(a)(5), and information that is in the ''public domain'' if published and generally available and accessible to the public through, for example, sales at newsstands and bookstores, subscriptions, second class mail, and libraries open to the public (22 CFR 120.11). Information is also in the public domain if it is made generally available to the public ''through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public in the United States'' or ''through fundamental research in science and engineering at accredited institutions of higher learning in the U.S., where the resulting information is ordinarily published and shared broadly in the scientific community.'' 22 CFR 120.11(6), (8)

The ITAR amendment herein concerns the transfer of defense articles fabricated only for fundamental research purposes otherwise covered by Category XV (a) or (e) outside of the United States and the provision of defense services and related unclassified technical data for the assembly and integration of such articles into a scientific, research or experimental satellite.

For the export of articles, the exemption allows U.S. accredited institutions of higher learning to export most such articles as long as all of the information about the article, including its design, is in the public domain. Specifically, the export may only be made to accredited institutions of higher learning or government funded research institutions located in certain countries. The exemption cannot be used for items listed in the Missile Technology Control Regime (MTCR) Annex or items designated as significant military equipment in the regulations.

For the provision of technical data and defense services, the exemption allows these same institutions the authority to provide defense services related to the assembly and integration of such articles into a scientific, research or experimental satellite when working with the same set of countries. The exemption does not permit the provision of defense services or technical data for the integration of the satellite or spacecraft to the launch vehicle, or of Missile Technology Control Regime (MTCR) controlled defense services or technical data. Consistent with the definition of export in the ITAR (§ 120.17(4)), exports to an identified country includes those to nationals of such countries in the United States or abroad.

Exporters that have questions about the applicability of these exemptions to specific activities should request an advisory opinion from the Department using the guidance provided in § 126.9 of the regulations. This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Exemption for U.S. Institutions of Higher Learning, 2401 E. Street, NW., 13th Floor, H1304, 2401 E Street, NW., Washington, DC 20037. Such persons must be registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act or be an accredited U.S. institution of higher learning.

List of Subjects

22 CFR Part 123

Arms and munitions, Exports.

22 CFR Part 125

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 123 and 125, are being amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

1. The authority citation for part 123 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

2. Section 123.16(b)(10) is added to read as follows:

§ 123.16 Exemptions of general applicability.

* * * * *

(b) * * *

(10) District Directors shall permit, without a license, the permanent export, and temporary export and return to the United States, by accredited U.S. institutions of higher learning of articles fabricated only for fundamental research purposes otherwise controlled by Category XV (a) or (e) in § 121.1 of this subchapter when all of the following conditions are met:

(i) The export is to an accredited institution of higher learning, a governmental research center or an established government funded private research center located within countries of the North Atlantic Treaty Organization (NATO) or countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 as a major non-NATO ally (and as defined further in section 644(q) of that Act) for purposes of that Act and the Arms Export Control Act, or countries that are members of the European Space Agency or the European Union and involves exclusively nationals of such countries;

(ii) All of the information about the article(s), including its design, and all of the resulting information obtained through fundamental research involving the article will be published and shared broadly within the scientific community, and is not restricted for proprietary reasons or specific U.S. government access and dissemination controls or other restrictions accepted by the institution or its researchers on publication of scientific and technical information resulting from the project or activity (See § 120.11 of this subchapter); and

(iii) If the article(s) is for permanent export, the platform or system in which the article(s) may be incorporated must be a satellite covered by § 125.4(d)(1)(iii) of this subchapter and be exclusively concerned with fundamental research and only be launched into space from

countries and by nationals of countries identified in this section.

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

3. The authority citation for part 125 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658.

4. Section 125.4(d) is added to read as follows:

§ 125.4 Exemptions of general applicability.

* * * * *

(d)(1) Defense services for the items identified in § 123.16(b)(10) of this subchapter exported by accredited U.S. institutions of higher learning are exempt from the licensing requirements of this subchapter when the export is:

(i) To countries identified in § 123.16(b)(10)(i) of this subchapter and exclusively to nationals of such countries when engaged in international fundamental research conducted under the aegis of an accredited U.S. institution of higher learning; and

(ii) In direct support of fundamental research as defined in § 120.11(8) of this subchapter being conducted either at accredited U.S. institutions of higher learning or an accredited institution of higher learning, a governmental research center or an established government funded private research center located within the countries identified in § 123.16(b)(10)(i) of this subchapter; and

(iii) Limited to discussions on assembly of any article described in § 123.16(b)(10) of this subchapter and or integrating any such article into a scientific, research, or experimental satellite.

(2) The exemption in paragraph (d)(1) of this section, while allowing accredited U.S. institutions of higher learning to participate in technical meetings with foreign nationals from countries specified in § 123.16(b)(10)(i) of this subchapter for the purpose of conducting space scientific fundamental research either in the United States or in these countries when working with information that meets the requirements of § 120.11 of this subchapter in activities that would generally be controlled as a defense service in accordance with § 124.1(a) of this subchapter, does not cover:

(i) Any level of defense service or information involving launch activities including the integration of the satellite or spacecraft to the launch vehicle;

(ii) Articles and information listed in the Missile Technology Control Regime (MTCR) Annex or classified as significant military equipment; or

(iii) The transfer of or access to technical data, information, or software that is otherwise controlled by this subchapter.

Dated: March 11, 2002.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 02–7347 Filed 3–28–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 3951]

International Traffic in Arms Regulations; Amendment to the List of Proscribed Destinations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by removing Armenia and Azerbaijan from the list of proscribed destinations for the exports and imports of defense articles and defense services.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Armenia and Azerbaijan were added to the list of proscribed destinations at section 126.1(a) of the ITAR in the **Federal Register** publication of July 22, 1993 (58 FR 39312). The Department of State is amending the ITAR to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Armenia or Azerbaijan. This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for Armenia or Azerbaijan involving items covered by the U.S. Munitions List (22 CFR part 121) will be reviewed on a case-by-case basis.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, removal of Armenia and Azerbaijan, 12th Floor, H1200, 2401 E Street NW., Washington, DC 20522–0112. Such persons must be so registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 126, is being amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

2. Section 126.1(a) is revised to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.* Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of the

Congo (formerly Zaire)) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas.

* * * * *

Dated: February 22, 2002.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 02–7346 Filed 3–28–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 1997–2234 (formerly 87–5 and 89–12)]

RIN 2125–AC30

Truck Length and Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the regulations that concern the exclusion of devices from the measurement of vehicle length and width. All previous interpretations related to exclusions from measurements of vehicle length and width are superseded to the extent they are inconsistent with these regulations. Also, a technical correction is being made to the information on length limitations for multiple cargo carrying units in appendix C for the State of Michigan. The primary goal of this proceeding is to consolidate the basic information from all previous policy notices on the topic, and to provide regulatory standards for making future judgments on the length and/or width exclusion status of specific devices.

EFFECTIVE DATE: This final rule is effective April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Klimek, Office of Freight Management and Operations, (202–366–2212); or Mr. Raymond Cuprill, Office of the Chief Counsel (202–366–0791), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

The first Federal legislation to cover maximum vehicle dimensions, involved establishing a maximum width of 96 inches for vehicles using the Interstate System. This occurred in 1956 as part of the landmark legislation that accelerated construction of the Interstate System. The 1956 law included a ''grandfather'' clause that enabled States to retain regulations in effect on July 1, 1956, if they allowed a vehicle width greater than 96 inches. The grandfather clause also covered any items a State may have excluded from width measurement.

The practice of excluding certain devices from width measurement, however, did not develop as an issue until States were required to begin certifying enforcement of size and weight laws annually to the FHWA in 1975. Certification was the result of the enactment of what is now 23 U.S.C. 141, as part of the Federal-aid Highway Amendments of 1974.

As a result of the expansion of size and weight enforcement brought on by the certification requirement, it came to the attention of the FHWA that only half of the States had a grandfather right to exclude certain devices from width measurement. The remaining States were allowing the exclusions based largely on a definition of vehicle width originally developed by the American Association of State Highway Officials (AASHO)[1] in 1963, and included in AASHO's 1963 ''Policy on Maximum Dimensions and Weights of Motor Vehicles to be Operated Over the Highways of the United States.''[2] The definition read, ''Width: The total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding approved safety devices and tire bulge due to load.''

The differences between the AASHO policy and the FHWA's interpretation of the applicability of grandfather rights, resulted in significant confusion not only for the States, but also for the trucking industry. Since the AASHO policy from 1946 provided the basis for the original 96-inch width legislation, the FHWA determined that the subsequently issued AASHO definition was an acceptable basis on which to revise agency policy. Accordingly, the FHWA adopted the AASHTO definition of vehicle width on June 28, 1979 (44 FR 37710). In taking this action, the FHWA also determined that the only ''approved safety devices'' permitted to exceed 96 inches would be rear-view mirrors, turn signal lamps, and hand-holds for cab entry/egress.

The next significant legislative action on vehicle size was the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424, 96 Stat. 2097). In order to avoid a repeat of the interpretation problems regarding vehicle width, section 411(h) of the STAA gave the Secretary of Transportation the authority to exclude from the measurement of vehicle length any safety and energy conservation devices found necessary for the safe and efficient operation of commercial motor vehicles (CMVs). That authority is now codified at 49 U. S. C. 31111(d). Section 416(b) of the STAA, now 49 U.S.C. 31113(b), authorized similar exclusions when measuring vehicle width. Section 411(h) also provided that no device excluded from length measurement by the Secretary could have, by design or use, the capability to carry cargo.

Since enactment of the STAA, the FHWA has issued three policy notices in the **Federal Register** that identified some 55 devices as length or width exclusive. Copies of the notices are available on-line under the FHWA docket number cited at the beginning of this document. (See 49 FR 23302, June 5, 1984; 51 FR 1367, January 13, 1986; and 52 FR 7834, March 13, 1987.) The

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[1] Now the American Association of State Highway and Transportation Officials (AASHTO).

[2] The current version of this policy titled ''Guide For Maximum Vehicle Weight and Dimensions'' is available from AASHTO by telephone (800) 231–3475, facsimile (800) 525–3362, mail at AASHTO, P.O. Box 96716, Washington, DC 20090–6716, or online at *http://www.transportation.org/publications/bookstore.nsf.*

FHWA has also handled a number of questions concerning specific pieces of equipment over the years.

This action completes a rulemaking process originally initiated through an advance notice of proposed rulemaking (ANPRM) issued on December 26, 1989 (54 FR 52951). The primary goal of this proceeding is to consolidate the basic information from all previous policy notices on the topic, and to provide regulatory standards for making future judgments on the length and/or width exclusion status of specific devices.

A notice of proposed rulemaking (NPRM) to amend the appropriate sections of 23 CFR part 658 was published on August 18, 2000 (65 FR 50471). In response to the NPRM, 57 additional entries were made to the docket. These entries represent 49 sets of comments, as some of the entries were duplicates, or multiple submissions from the same entity. Comments were provided by 12 companies involved in the manufacture or shipping of vehicles and/or related equipment, 11 commercial-vehicle-related industry associations, 10 different State transportation or police agencies, 10 motor carriers, two organizations of State officials, two individuals, one safety advocacy group, and one congressional committee.

Scope and Applicability

The final rule published today applies to vehicles authorized by the provisions of the STAA while operating on the National Network (NN) [3] and routes giving reasonable access to and from the NN. Nothing in this rule, however, would prohibit States from applying the rule to other vehicles and/or highway systems.

The primary goal of this rulemaking is to establish a simplified manner of determining what devices attached to a commercial vehicle are included or excluded when measuring vehicle dimensions for compliance with applicable length and width laws. As noted earlier, this rulemaking began in 1989. As the NPRM explained, however, the FHWA has been issuing interpretations on this subject since the 1970's. The equipment and enforcement practices in use today have evolved over the last quarter century in response to these directives. The intent of this proceeding is to continue to allow virtually all of the equipment and devices the FHWA has previously indicated are, or should be, excludable from the measurement of vehicle length or width. Included are the devices listed in previous **Federal Register** notices, provided they meet the detailed requirements of the rules promulgated today, specifically:

(1) Notice of interpretation (NOI) at 51 FR 1367 (January 13, 1986).

- A device up to 8 inches long at the front of a trailer chassis the purpose of which is to secure containers and prevent movement in transit.

(2) NOI at 52 FR 7834 (March 13, 1987).

- Non-load carrying tie-down devices on automobile transporters;
- Non-load carrying devices falling within the swing radius of the trailer as measured from the kingpin to the front corner of the trailer;
- Any add-on equipment such as lift gates, winches, etc., at the rear of a trailer that do not extend more than 24 inches from the rear of a trailer in the up position;
- Non-rigid aerodynamic devices that do not extend more than 5 feet from the rear of a trailer in the operational position. Such devices shall not obscure tail lamps, turn signals, marker lamps, identification lamps, license plates, hazardous material placards, or any other required safety device;
- A front coupler device on a semitrailer or trailer used in road and rail intermodal operations.

Other devices at the front of a semitrailer or trailer including:

- Aerodynamic device, air deflector;
- Air compressor;
- Certificate holder (manifest box);
- Door vent hardware;
- Electrical connector;
- Gladhand;
- Handhold;
- Hazardous material placard;
- Heater;
- Ladder;
- Pickup plate lip;
- Pump offline on tank trailer;
- Refrigeration unit;
- Removable bulkhead;
- Removable stakes;
- Stabilizing jack (anti-nosedive device);
- Stake pockets;
- Step;
- Tarp basket;
- Tire carrier; and
- Uppercoupler.

Devices at the rear of a semitrailer or trailer including:

- Air compressor;
- Handhold;
- Hazardous material placard;
- Ladder;
- Lift gate;
- Pintle hook;
- Removable stakes;
- Resilient bumper block;
- Splash and spray suppression device;
- Stake pockets; and
- Step.

Devices excluded from width determination, not to exceed 3 inches from the side of the vehicle including:

- Corner caps;
- Hazardous materials placards;
- Lift pads for trailer on flatcar (piggyback) operation;
- Rain gutters;
- Rear and side door hinges and their protective hardware;
- Side marker lamps;
- Tarp and tarp hardware;
- Tie-down assembly on platform trailers;
- Wall variation from true flat; and
- Weevil pins and sockets on low-bed trailers.

Discussion of Comments

The National Truck Equipment Association (NTEA) requested that straight trucks be included in the final rule coverage. Because the STAA is silent with respect to straight trucks, the authority to regulate their operation remains with the States.

The Morgan Corporation, a manufacturer of truck bodies and related equipment, posed several questions:

1. Will changes in the length and width measurements in the Federal regulations supersede the States' rules for length and/or width exclusions, or will the States be empowered to change, add, or delete exclusions as they see fit?

State regulations for STAA vehicles operating on the NN, or routes providing reasonable access to and from the NN, must be in accord with this final rule. States, however, retain the authority to determine the rules that apply to other, non-STAA vehicles wherever they operate.

2. Where is the 3-inch exclusion located? If the vehicle is 96-inches wide, is the allowance 6-inches on each side and front of the vehicle? If the vehicle is 102-inches wide is the allowance 3-inches on each side and the front of the vehicle? Where will the 12-inch allowance for rearview mirrors be measured? If stake pockets, rub rails, and stake racks are present and the total width of the vehicle is 108-inches, will this be legal?

As mentioned earlier, the final rule published today applies to vehicles authorized by the provisions of the

[3] As defined 23 CFR part 658, The National Network is the composite of the individual network of highways in each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under § 658.11(f) or deleted under § 658.11(d), and those portions of the Federal-aid Primary System in existence on June 1, 1991, set out by the FHWA in appendix A to this part.

STAA while operating on the National Network NN and routes giving reasonable access to and from the NN. A 96-inch wide vehicle is not a STAA vehicle at least with respect to its width. The decision as to width of an exclusion zone is a State determination.

As will be explained later in this document, the 12-inch maximum mirror extension proposed in the NPRM is not being adopted. The safe placement of mirrors will be a decision left to the vehicle manufacturers so that the most advantageous designs can be adopted for the various types of commercial vehicles.

If the stake pockets, sub-rails, and stake racks on a 102-inch wide vehicle are located within 3-inches of the side of the cargo-carrying platform, they are legal.

3. The proposed rule discussed a 24-inch lift gate and a 6-inch resilient bumper. Does this mean that a trailer may have a 24-inch wide lift gate that is exempt from length measurement plus a 6-inch resilient bumper attached to the lift gate? Will these extensions be legal?

No, under § 658.16(c) of the final rule, exclusions are specific and may not be added to other excludable devices. Therefore, a vehicle can have the lift gate or the bumper, but not both.

The Western Association of State Highway Transportation Officials (WASHTO) Committee on Highway Transport expressed several concerns. First is a need for clear regulatory language, so that the transportation industry and enforcement community will know which devices are excluded from the length and width determinations. Second, WASHTO believes the NPRM allowed too much room for interpretation which may result in longer and wider trailers. And third, specific items such as roof structures, sidewalls, taillight assemblies, and undercarriage devices should be included in all measurements.

The regulation issued today restates practices that have been widely, though not universally, accepted since the 1970's. It does not authorize incremental expansion of vehicle size. Most of the devices listed in previous **Federal Register** notices on this issue are included in this rule. Devices developed in the future will be covered, as long they meet the dimensional requirements of this final rule, and do not carry cargo.

The Illinois DOT requested publication of a list of ''efficiency enhancing devices'' as part of the final rule. Virtually all of the devices included in the previous **Federal Register** notices on this issue (the NOI's from 1986 and 1987) are listed in this final rule, as well as any additional devices developed since then that the FHWA has indicated should also be excluded from vehicle measurement. Some of these are safety, rather than efficiency-enhancing devices but we see no need to list them separately.

The Oregon DOT expressed concern regarding specific devices, but chief among the State's issues was that the NPRM was too broad in its scope and could easily result in unintentional increases in vehicle width and length. The State's primary example involved use of the rolling tarp systems that have been developed in recent years. In the context of this discussion, a ''tarp system'' or ''rolling tarp system'' refers to the aftermarket system that encloses the cargo area of a flatbed semitrailer. Such systems are designed to be stowed accordion-style at either end of the trailer during loading, and then rolled out and locked in place. To accommodate this type of operation, a two- to three-inch rail is added to the side edge of the flatbed, extending the full length of the trailer. Ribs that provide internal support for the closed system slide or roll along the side rail, depending on the specific design of the system. A bulkhead at the front of the unit and doors at the rear are also generally a part of these systems, and are used to support the tarp in the operational position. Tarp systems will be more fully discussed later in this document. The Oregon position is that even though these systems may have some safety benefit for the operator, the resulting vehicle is in fact 108 inches wide. The State contends that the NOI of 1987 did not intend to allow 108-inch wide trailers under any circumstances.

Trailers may, in fact, be up to 108 inches wide, measured from the outermost points of two 3-inch width exclusive devices. That is neither new nor illegal. It has been the policy of the FHWA since the 1970's to allow a 3-inch width exclusion on either side of a trailer. There is no difference in principle between exclusions for tarp systems and for stake pockets, which have been used on flatbeds for well over half a century. Congress clearly knew of the FHWA policy, and approved it in the STAA.

An ancillary argument of the Oregon DOT to the allowance of tarp systems is that such an action will cause the State to reconsider the availability of several routes from its list of approved reasonable access routes. Again, this final rule does not change existing practice. Any route currently included on the NN, or used for reasonable access, can be reviewed for continuing use under procedures available in this part.

The Wisconsin DOT expressed a general concern similar to that from the Oregon DOT that the NPRM was too expansive about what could be excluded from measurement and that the ultimate result would be wider and longer vehicles. Specifically, Wisconsin is apprehensive that a motor carrier may try to carry additional equipment such as tools, or even decorations, outside of a vehicle to increase the cargo-carrying capability. The exclusion of lifts, bumpers, forklifts and loading dollies would create potential safety problems around the vehicle. The State also commented that the title of the definition ''safety devices-width exclusive'' is misleading as well as vague, and would allow the exclusion of any non-cargo carrying device, including advertising and decorations.

This final rule changes the title of the definition to ''width exclusive devices'' for consistency with length exclusive definition. Both definitions, however, have been changed to clarify that only devices that contribute to a vehicle's safe operation or energy conservation, can be excluded from the length or width of a vehicle. Fork lifts and loading dollies are not excluded from length measurement, as they do not directly contribute to the safe operation of a vehicle, or help to conserve energy. They are carried as needed and if not carried directly on the vehicle, would be considered cargo overhang, subject to State determinations on acceptability.

The Massachusetts State Police also would like to have a list of excludable items published as part of the rule, as the list would then automatically be incorporated into State statutes and make it easier for a magistrate to adjudicate any citations. They also believe that the State should have the basic authority to decide if an appurtenance should be excluded from width measurement.

As stated previously, the list of excludable items previously published as part of earlier NOI's is part of the final rule published today. Each State must have uniform rules with respect to measurement of STAA vehicles. The goal of this final rule is to provide that uniformity and minimize the opportunities for non-uniform treatment among States.

The Truck Trailer Manufacturers Association (TTMA) is an organization that develops and publishes position papers used by the industry to maintain uniform standards in trailer construction and repair. While generally supporting the NPRM, the TTMA

wanted two specific items included in the rule: (1) A one-inch exclusion for structural repairs and reinforcements on side doors, and (2) a reference to a TTMA ''Recommended Practice'' bulletin incorporating all length and width exclusive guidance.

As discussed in the Supplementary Information section of the NPRM, the one-inch exclusion for structural repairs, etc., will continue to be allowed, but within the 3-inch general exclusion. It is not additive, i.e., it does not allow a 3-inch plus a 1-inch width exclusion in the area of the reinforced sections. This exclusion is limited to van (box) semitrailers. Weld-on or bolt-on repairs may be necessary during the life of the unit to maintain the operational safety of the trailer. Vehicles needn't be discarded or completely rebuilt to original specifications when damaged on one side.

This final rule is clear on what is and is not to be excluded from width measurement. The TTMA is free to include the regulatory language as part of its bulletin service for members, but referring to a TTMA bulletin in a regulation could restrict availability of the regulatory information to organization members and/or bulletin subscribers.

Multinational discussions on harmonization of vehicle weights and dimensions have been under way between the United States, Canada, and Mexico since ratification of the North American Free Trade Agreement (NAFTA) in 1994. In recognition of this activity the FHWA is preparing an NPRM to consider an extension from three to four inches of the distance that non-property carrying devices may protrude from the side of a commercial vehicle.

Tarp Systems

As described earlier in this document, a ''tarp system'' or ''rolling tarp system'' refers to the aftermarket system that encloses the cargo area of a flatbed semitrailer. Such systems are designed to be stowed accordion-style at either end of the trailer during loading, and then rolled out and locked in place.

The Illinois, Maryland, and Oregon DOT's oppose rolling tarp systems as they believe these systems result in wider vehicles, i.e., up to 108-inches wide. They claim that the 108-inch bulkheads at the front of the trailer and 108-inch metal doors at the rear, necessary components of certain designs, further support their argument regarding width. Illinois and Maryland also oppose the tarp systems because they provide increased efficiency for only one portion of an industry, an action that these States consider potentially discriminatory in a business sense.

On the other hand, eight motor carriers, seven manufactures, two national associations, one leasing company, and one individual driver, provided support for the continued exclusion of these systems from width enforcement measurement. They argued that (1) national uniformity on treatment of these systems is needed; (2) the tarp systems improve accessibility and safe and efficient loading/unloading; (3) the systems drastically reduce the risk of injury since drivers do not have to climb onto the load to spread and secure heavy tarps; and (4) the systems protect cargo from weather and road debris, as well as protecting surrounding traffic from small bits of the cargo that may work loose. The importance of the driver safety factor has quickly grown to the point where some carriers now use the availability of these systems as a driver recruitment tool.

Rolling tarp systems eliminate the injuries that occur when drivers fall while climbing atop a load to spread and tie down a conventional tarp. This is a very worthwhile improvement in safety. At the same time the agency is cognizant of the potential for misuse of these systems, as the typical design does provide an extra area of flat space, between the support ribs, that could be used to carry cargo. There are several obstacles to loading a flatbed in a manner that would use the extra area provided by the internal rib support rails for cargo. Such a practice would be very time consuming, could damage the tarp fabric and would very likely interfere with the proper operation of the cargo tie down assemblies required for load securement. In addition, once loaded in such a fashion, the support ribs would not slide, thus defeating the efficiency of the system. While we cannot rule out the occasional deliberate misuse of the system, even though that would defeat the purpose of investing in it, the potential for occasional misuse should not disqualify these systems from width-exclusive status, especially in light of the safety advantages accruing daily to the driver/operators using these systems.

These tarp systems qualify as width exclusive if: (1) When the vehicle is in operation, no component of the tarp system extends more than 3-inches laterally beyond the cargo carrying portion of the vehicle, and (2) the only function of the headerboard, a necessary component of these systems, is to provide structural support for the system, and not to comply with the ''front end structure'' cargo support requirements of 49 CFR 393.106. If a tarp system includes rear doors as part of the design, their exclusion from width measurement is based on the same principles as for the headerboard. If the only function of the doors is to complete a seal of the cargo area and anchor the sliding walls, then they would be excluded from width measurement. If however, they are also used to support cargo at the rear, i.e., restrain otherwise unsecured cargo, then they are limited to 102-inches in width. Any wider, and the excludablity of the entire system would be nullified. Any cargo being carried on a flatbed equipped with a tarping system must be secured in compliance with the requirements of 49 CFR part 393, subpart I. Any use of these tarping systems for purposes of cargo securement would disqualify the system as width exclusive.

Recreational Vehicles

When recreational vehicles (RV's) are being moved to the point of customer delivery, e.g., from a manufacturing location to a dealer, or between a dealer and a tradeshow, they are commercial vehicles under the definition of Part 658 (the vehicle itself is the merchandise being transported), with the most pertinent issue being the 102-inch vehicle width limitation. When a customer takes possession, however, their status changes. Unless they are clearly being used in a commercial enterprise, they become private, personal property and are no longer subject to Part 658. Items such as allowable vehicle width become State determinations. RV's often include items that are attached to the sides of the unit for use when it is parked. When the RV's are moving, these devices either fold up or roll up against the body. As long as they remain within the 3-inch zone, States have generally moved to exclude the devices from vehicle width (as long as they do not carry cargo), while the unit is in a commercial status.

Recently, however, more RV's are coming equipped with roll up awnings for use when parked. For stability and strength, more of these awnings are being built into the structure of the RV's. However, when rolled up in the traveling position the awning extends up to 6-inches from the side of the unit. Under current regulation when an RV so equipped is moving as a commercial vehicle, it must be covered by an overwidth special permit, as it has an appurtenance that extends more than 3-inches from the side of the unit. Once a customer takes possession, again assuming private personal use, there is

no Federal requirement that States issue permits, and, in fact, in recent years many States have enacted legislation specifically exempting roll-up awnings from any width requirements for personal use vehicles.

The Wisconsin DOT, Recreational Vehicle Industry Association (RVIA) and Representative Bud Shuster, then chairman of the House Committee on Transportation and Infrastructure, all commented that this ''one-time'' requirement is not in the public interest. All three commented that for the short time and distance (relative to its eventual use) these units are commercial, they should be exempted from any permit requirements. These requirements simply add to the transportation (and eventually buyer) cost, and create unnecessary administrative burdens on State permitting offices already stretched thin with increased commercial needs. What the commenters are proposing would require an amendment of the definition of commercial vehicle used in this part. Such an action is beyond the scope of this rulemaking. However, in deference to these comments, as well as language contained in the Senate Committee on Appropriations report on S. 1178 (a bill making appropriations for DOT for FY 2002 and other purposes), the FHWA will proceed with a separate NPRM to consider appropriate regulatory changes in this area. (See S. Rep. No. 107–38, at 66 (2001)).

Comments on Specific Features of the NPRM

Turn Signals

The Utah DOT, American Trucking Associations (ATA), Commercial Vehicle Safety Alliance (CVSA), the Truck Manufacturer's Association (TMA), Specialized Carriers and Rigging Association (SC&RA), the National Automobile Dealers Association (NADA), and Grote Industries Inc. (a manufacturer of safety equipment), all opposed the 6-inch maximum extension for turn signals. The basis for their opposition was essentially the same: Given the variation in design of tractors, a 6-inch limit is too restrictive and may well make them invisible to other traffic, thus defeating the purpose of turn signals. These commenters also raised the issue of uniform enforcement, questioning where the 6-inches would be measured from, given the designs of truck tractors in use today.

The 6-inch limit was included in the NPRM in response to earlier comments in this rulemaking that some limit was needed to prevent equipment from extending so far that it would interfere with adjacent or oncoming traffic. However, based on the comments received to the NPRM, the final rule simply exempts turn signals from width and length measurement regardless of their dimensions. A no-limit position on signals has been implied in the AASHTO policy [4] since at least 1963, and has been part of the Federal policy since 1979. As no support was provided for a limit, and several good arguments were presented in opposition, the current regulatory language remains in place and turn signals may be located wherever necessary to fulfill their purpose.

Rearview Mirrors

Seven commenters—the ATA, NADA, SC&RA, NATA, TMA, Grote Industries, Inc., and the Colorado State Patrol—opposed the 12-inch maximum extension limit on rearview mirrors. The main theme of this opposition was similar to that expressed against a limit on turn signals. Twelve inches would be too restrictive. Many truck tractors are 96-inches wide while trailers are up to 102-inches wide with a 3-inch allowance for non cargo-carrying devices. A 12-inch limit could make it impossible to comply with Federal Motor Vehicle Safety Standard (FMVSS) number 111,[5] which requires that ''mirrors shall be located so as to provide the driver a view to the rear along both sides of the vehicle * * *'' [49 CFR 571.111 (S8.1)]. Enforcement would be a problem due to the varying designs of truck tractors. As with turn signals, the 12-inch limit was included in the NPRM in response to earlier comments in this proceeding that some limit was needed to prevent equipment from extending so far that it would interfere with adjacent or opposing traffic. However, based on the comments received to the NPRM, the final rule simply exempts rearview mirrors from width and length measurement regardless of their dimensions. The no-limit position on mirrors has been implied in the AASHTO policy since at least 1963, and has been part of Federal regulation since 1984. As no support was provided for a limit, and several good arguments were presented in opposition, as with turn signals the current regulatory wording remains in effect. Rearview mirrors may extend as far as necessary to fulfill their function.

Swing Radius Concept

The ATA commented that the swing radius language in the NPRM for exclusions at the front of a semitrailer or trailer, along with the additional definition, was not necessary, because the mechanics of articulated vehicle operation make any regulatory intervention in this area unnecessary. Swing radius language goes back to the language in the 1987 NOI, wherein any non-load carrying item within the swing radius of a trailer (or semitrailer) was excluded from length or width measurement. Swing radius is the radius from the kingpin to both front corners of the unit, and the area within that radius at the front end of the trailer. The ATA indicated that any devices included on the front of a trailing unit would have to remain within this ''swing radius'' area or run the risk of not clearing the corner of the cab on a turn. Such a situation would obviously cause damage not only to the device, but the cab as well.

A swing radius rule appears to be unnecessary. Accordingly, the language of this final rule simply exempts any non-load carrying device at the front of a trailer or semitrailer from length measurement. No limit is placed on the length of the item as the swing radius of the combination will generally control its size. The FHWA is prepared, however, to re-visit this issue if application of this rule results in vehicle designs or operational conditions that create potential safety problems for adjacent or oncoming traffic.

Three Inch Exclusion at the Front of a Vehicle

The Oregon DOT opposes application of the 3-inch allowance for non-load carrying devices to the front of a vehicle, i.e., the power unit. It indicates that implementation of this provision will simply allow vehicles to be 3 inches longer, by no longer including any type of bumper in the overall measurement of a vehicle until it would extend more than 3 inches.

As we have stated throughout this discussion, the purpose of this rulemaking is to consolidate in a single location the regulatory language for length and width exclusive determinations. Our goal in issuing this final rule is essentially to maintain the status quo with respect to length and width exclusive devices. Insofar as the front of a vehicle is concerned, the NPRM obviously violated the stated intent of maintaining the status quo.

[4] See Footnote #1.

[5] Federal Motor Vehicle Safety Standard (FMVSS) number 111 (49 CFR 571.111) can be obtained through the National Highway Traffic Safety Administration, Publication Orders and Distribution, Suite 6123, 400 Seventh Street, SW., Washington, DC 20590. The standard may also be located through the Government Printing Office's website. The URL is *http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html*. Simply type 49 CFR part 571 Section 111 in the appropriate boxes.

Except for front overhang allowed on automobile transporters, the existing regulatory language in part 658, and other guidance issued by the FHWA over time, does not allow the exclusion from length measurement of any devices at the front of a vehicle. Clearly the NPRM language for proposed § 658.16(b) should not have included the phrase ''the front or'' in referring to the 3-inch exclusion zone. That has been corrected in this final rule; the 3-inch general exclusion for non-load carrying devices does not apply to the front of a commercial vehicle. The only item at the front of a commercial vehicle that is excluded from measurement of the vehicle length is a resilient bumper that may extend up to 6-inches from the front.

The 24-Inch Rear Exclusion

The Oregon DOT commented that the 24-inch exclusion zone at the rear of a vehicle should be explicitly limited to those devices that are needed for loading and unloading the unit, and that any other non-cargo carrying devices should be limited to no more than a 3-inch exclusion. They are concerned that a general 24-inch exclusion zone will be used by industry to extend or locate equipment that is required on a vehicle (such as mud flaps, bumpers, and tail light assemblies) but that is non-load bearing, essentially resulting in a 24-inch longer trailer.

The State's concern is accommodated by this rule. The regulatory language regarding exclusions from length measurement of items at the rear of a vehicle includes the following: ''that do not extend more than 24-inches beyond the rear of the vehicle and are needed for loading or unloading.'' Such devices (and the additional items listed in new appendix D to part 658), aerodynamic devices and resilient bumpers are the only items that are excluded from length measurement at the rear of a semitrailer or trailer. Except for the loading/unloading and aerodynamic devices, and the resilient bumpers, all other excluded devices at the rear of the semitrailer or trailer are limited to a maximum extension of 3-inches from the rear of the unit.

Aerodynamic Devices

The Oregon DOT opposes the allowance of rigid aerodynamic devices at the rear of a vehicle, because its experience has been that carriers often use the interior space to conceal cargo that extends beyond the limit of the vehicle.

Aerodynamic devices on the rear of a vehicle pose a vexing problem. Maximizing fuel economy during vehicle operation is once again becoming an increasingly important factor in the trucking industry, not to mention its importance in managing of the nation's fuel supply. On the other hand, through the development of standardized rear impact guards, the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA) have provided a significantly improved degree of rear underride protection to reduce the often violent results of crashes where an automobile impacts the rear of a truck or semitrailer. In addition, there is, as Oregon points out, the potential for deliberate misuse in order to gain a competitive edge with respect to cargo hauling.

The NPRM included language that would allow flexible aerodynamic devices to extend up to 8 feet. This language was based on a request the FHWA received in 1993 from the developer of such a device. At that time we could not make a determination on the implications for highway safety of allowing this device and indicated that further consideration would be part of this rulemaking. Comments on this aspect of the NPRM were received from two State DOTs (Utah and Maryland) and the Commercial Vehicle Safety Alliance (CVSA). All three comments asked why the FHWA was considering the device, and the State DOTs had concerns over the safety implications for following vehicles of an 8-foot flexible device that might sway or oscillate due to cross winds. Since the original correspondence was received by the FHWA, no additional information has been provided by the developer of the device to indicate any operational experience, or that it has even been allowed to operate in any State. As with tarping systems discussed earlier, the potential for deliberate misuse of these devices should not rule out their use unless widespread deliberate violation becomes endemic with certain types of aerodynamic devices.

The final rule issued today allows certain aerodynamic devices to extend up to 5 feet beyond the rear of a commercial vehicle. A 5-foot device was included in the 1987 NOI. However, because of the need to make such devices compatible with the rear-underride provisions of the NHTSA and FMCSA safety regulations, the rule requires that aerodynamic devices ''have neither the strength, rigidity nor mass to damage a vehicle, or injure a passenger in a vehicle, that strikes a trailer so equipped from the rear.'' The NPRM mentioned aerodynamic devices ''made of flexible material which are inflated by air pressure and lack a rigid structure.'' Such devices would most likely meet the requirements of § 658.16(b)(iv), but other aerodynamic designs may also be consistent with the rule. To repeat, developers of aerodynamic devices should keep in mind that this rule does not exempt motor carriers from complying with the FMCSA's rule (49 CFR 393.86).

The Agency is not in any way minimizing the critical importance of achieving the maximum possible fuel economy in the Nation's transportation system. But we cannot allow a device with the potential of negating the safety gains achieved by the rear underride protection rules.

Inadvertent Restrictions Imposed by a General 3-Inch Exclusion Zone

The TMA comments highlighted two areas where the general 3-inch exclusion zone created by the language of the NPRM would be too restrictive: Steps and handholds for cab entry/egress, and equipment such as winches that are often included at the front of a vehicle for certain vocational applications. As discussed above, the AASHTO has had a ''no limit'' policy on steps and hand holds for cab entry/egress since at least 1963. That policy has been included in part 658 since its initial publication on June 5, 1984 (49 FR 23302). Given that the intention of this rulemaking is essentially to maintain the status quo with respect to length and width exclusive devices, this final rule continues to allow these items, without dimensional limit. The TMA comment concerning the front of the vehicles was the only mention of winches and related equipment. The power units of the STAA vehicles, to which this final rule applies, typically are only used to transport trailers and semitrailers, and for no other function. The TMA comment would appear to be directed to special use single unit vehicles such as tow trucks. Single unit vehicles are not STAA vehicles, and are not covered by these rules. States have complete discretion whether to include or exclude such devices from the length of straight trucks.

Automobile Transporter Support Ramps or ''Flippers'''

The Maryland DOT expressed opposition to treating as length exclusive devices the extendable ramps or ''flippers'' on automobile transporters. The State argued that this proposal was inconsistent with the principle that length exclusive devices not be cargo carrying.

''Flippers'' are used for supporting vehicles that overhang the front or rear

of an automobile transporter. The vehicle overhang provisions of 23 CFR 658.13(e)(1)(ii) are based on the STAA's specialized equipment authority [49 U.S.C. 31111(g)], not its length-exclusive provision [49 U.S.C. 31111(d)]. Congress explicitly designated automobile transporters as specialized equipment, and the FHWA adopted rules that conform to industry practice. For the last decade, the agency has consistently interpreted § 658.13(e)(1)(ii) as allowing the use of retractable platforms to position and secure vehicles. When auto transporters are empty, however, we concluded that these platforms should be included in any length measurement if not retracted. This enables vehicle transporters to maximize the capacity of their equipment, while requiring them to minimize vehicle length when the flippers are not needed. This rule codifies that policy.

Support for the NPRM

Several commenters offered general support for the concept of the NPRM but had additional comments.

The National Automobile Transporters Association (NATA) supported the proposed language regarding retractable platforms or ''flippers'' on automobile transporters. As discussed above, this rule codifies what had previously been FHWA policy on this issue.

The American Bus Association (ABA) supported the overall concept of the NPRM, but would also like to see a separate commercial vehicle designation for motor coaches with its own size and weight rules. Such an action is beyond the scope of this rulemaking.

The National Automobile Dealers Association (NADA) also generally supported the NPRM, but asked that the dimensions of mirrors and turn signals not be limited. As discussed earlier, the final rule adopts that position.

Other Requests

Auto Transporter Bumper Step

The Supplementary Information section of the NPRM discussed the issue of allowing a step across the full width of the front bumper of an automobile transporter, extending outward from the front bumper. The operator would use the step in the loading/unloading process to secure the vehicle being transported at the front of the head rack. A commenter to the ANPRM asked for a 4-inch wide step, while the NPRM indicated that the 3-inch exclusion provided enough room, and if an additional inch was needed, that the step could be recessed in some manner into the front of the unit. The ATA and the NATA provided similar comments on this issue. They contend that in order to avoid regulatory conflict with 49 CFR 399.207(b)(4), [6] the step should be 5-inches deep, extending across the width of the front bumper. As an alternative to the step, the NATA proposed the FHWA consider excluding the front bumper of an auto transporter from length measurement and allow the step to be incorporated, *i.e.*, allow a 5-inch wide bumper to be length excluded.

Neither the specialized equipment rules in § 658.13(e)(1) nor the general length provisions in § 658.13(a)–(d) authorize steps that extend beyond the front bumper of automobile transporters, nor have FHWA interpretations allowed any such devices. The FMCSA's step regulations apply only to ''high profile COE [cab-over-engine] trucks or truck tractors,'' which are rarely used for auto transporters, and they require steps ''on each *side* of the vehicle where a seat is located * * *'' [49 CFR 399.207(b) (emphasis added)], not at the front of the vehicle. All previous Federal statements on length exclusive devices have referred to the trailer or semitrailer.

Allowance of a 5-inch straight edge across the width of a power unit may at times help an operator with vehicle securement on the headrack, although a shorter operator may not be able to reach the equipment. However, that edge could at all times pose a safety threat to any person or object that may come in contact with it, depending on the speed of the vehicle. In addition, the existence of such a step may also be in conflict with 49 CFR 393.203(e), which reads '' The front bumper must not be missing, loosely attached, or protruding beyond the confines of the vehicle so as to create a hazard.''

Earlier in this section, a 3-inch exclusion zone at the front of the vehicle was discussed and rejected. For the same basic reasons, this final rule does not allow any type of step at the front of a vehicle (which for STAA vehicles means the power unit) to be length exclusive. There are alternatives available, if auto transporters must contain a capability for the operator to reach the bottom of the headrack with something other than a ladder.

The only item at the front of a commercial vehicle that is excluded from length measurement by this final rule is a resilient bumper up to 6 inches deep. In order to avoid undue hardship for operators of auto transporters that already include a step, the FHWA will allow a period of 3 years from the effective date of this rule for existing vehicles to comply with this rule. It will be the responsibility of the operator of the unit to show proof of the existence of the step prior to the effective date of this rule. Such proof can be in the form of a work order for equipment modification, a receipt for purchase and installation of the piece, or any similar type of documentation. However, three years after the effective date of this rule, anything other than a resilient bumper will be included in the vehicle's length.

Dromedary Boxes

The ATA suggested that the agency use this rulemaking as an opportunity to designate truck tractors with dromedary equipment used by the munitions hauling industry as specialized equipment. That is beyond the scope of this rulemaking.

Equipment Grandfathers

The TTMA raised the issue of grandfathering equipment that has been in use since publication of the 1987 NOI, if this final rule were to change application of the length and width exclusive concepts. As we have noted several times throughout this section, the intent of this proceeding is to continue to allow virtually all of the equipment and devices that up to now the FHWA has indicated are, or should be, excludable from the measurement of vehicle length or width. The only equipment grandfathering included in this final rule involves automobile transporters with a step on the front bumper to assist the operator in reaching the headrack, which also causes the unit to exceed the 65- or 75-foot length limits that apply to these transporters.

Multi-Cargo Carrying Limitation Information—Michigan

Information provided by the State of Michigan has shown that the operation of a truck-trailer combination with an overall length of 70 feet used to haul saw logs, pulpwood, and tree length poles, has been legal under State law since May 1990. In bringing this fact to our attention, the State has also provided information in the form of affidavits to show that truck-trailer combinations at the 70-foot length were in operation in the State prior to June 1, 1991. These affidavits are from both State officials and private operators. Appendix C is being revised today to correct this oversight.

[6] 49 CFR part 399, Employee Safety and Health Standards, Subpart L, Step, Handhold, and Deck Requirements for Commercial Motor Vehicles, is available online from the URL: *http://www.access.gpo.gov/nara.*

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This final rule will not adversely affect, in a material way, any sector of the economy. There will not be any additional costs incurred by any affected group as a result of this rule. In addition, this final rule will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs. Therefore a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This action merely replaces previous policy guidance on specific devices that may extend beyond the structural members of a vehicle with a general rule covering how far devices may extend beyond the structural members of vehicles.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or significant federalism implications on States that would limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

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.

Paperwork Reduction Act of 1995

This action does not contain a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property of otherwise have taking implications under Executive Order 125630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The Agency has analyzed this section for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that the rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 658

Grants Program—transportation, Highways and roads, Motor carriers.

Issued on: March 21, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. Revise the authority citation for part 658 to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; 49 CFR 1.48(b)(19) and (c)(19).

2. Amend § 658.5 by revising the definition of ''Length Exclusive Ddevices'', removing the definition of ''Safety Devices-Width Exclusion'' and adding the definition of ''Width Exclusive Devices'' in alphabetical order, to read as follows:

§ 658.5 Definitions.

* * * * *

Length Exclusive Devices. Devices excluded from the measurement of vehicle length. Such devices shall not be designed or used to carry cargo.

* * * * *

Width Exclusive Devices. Devices excluded from the measurement of vehicle width. Such devices shall not be designed or used to carry cargo.

3. In § 658.13, revise paragraph (e)(1)(ii), remove paragraph (f), and redesignate paragraphs (g) and (h) as paragraphs (f) and (g), respectively, to read as follows:

§ 658.13 Length.

* * * * *

(e) * * * (1) * * *

(ii) All length provisions regarding automobile transporters are exclusive of front and rear cargo overhang. No State shall impose a front overhang limitation of less than 3 feet or a rear overhang limitation of less than 4 feet. Extendable ramps or ''flippers'' on automobile transporters that are used to achieve the allowable 3-foot front and 4-foot rear cargo overhangs are excluded from the measurement of vehicle length, but must be retracted when not supporting vehicles.

* * * * *

§ 658.15 [Amended]

4. Amend § 658.15 by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

5. Add § 658.16 to read as follows:

§ 658.16 Exclusions from length and width determinations.

(a) Vehicle components not excluded by law or regulation shall be included in the measurement of the length and width of commercial motor vehicles.

(b) The following shall be excluded from either the measured length or width of commercial motor vehicles, as applicable:

(1) Rear view mirrors, turn signal lamps, handholds for cab entry/egress, splash and spray suppressant devices, load induced tire bulge;

(2) All non-property-carrying devices, or components thereof—

(i) At the front of a semitrailer or trailer, or

(ii) That do not extend more than 3 inches beyond each side or the rear of the vehicle, or

(iii) That do not extend more than 24 inches beyond the rear of the vehicle and are needed for loading or unloading, or

(vi) Listed in appendix D to this part;

(3) Resilient bumpers that do not extend more than 6 inches beyond the front or rear of the vehicle;

(4) Aerodynamic devices that extend a maximum of 5 feet beyond the rear of the vehicle, provided such devices have neither the strength, rigidity nor mass to damage a vehicle, or injure a passenger in a vehicle, that strikes a trailer so equipped from the rear, and provided also that they do not obscure tail lamps, turn signals, marker lamps, identification lamps, or any other required safety devices, such as hazardous materials placards or conspicuity markings; and

(5) A fixed step up to 3 inches deep at the front of an existing automobile transporter until April 29, 2005. It will be the responsibility of the operator of the unit to prove that the step existed prior to April 29, 2002. Such proof can be in the form of a work order for equipment modification, a receipt for purchase and installation of the piece, or any similar type of documentation. However, after April 29, 2005, the step shall no longer be excluded from a vehicle's length.

(c) Each exclusion allowance is specific and may not be combined with other excluded devices.

(d) Measurements are to be made from a point on one side or end of a commercial motor vehicle to the same point on the opposite side or end of the vehicle.

6. Amend appendix C to part 658 by revising the entry for the State of Michigan in the table entitled ''Vehicle Combinations Subject to Pub. L. 102–240'', and by adding a listing for the State of Michigan for a truck-trailer combination vehicle after the existing listing for truck tractor. The amended and added portions of appendix C read as follows:

Appendix C to Part 658—Trucks Over 80,000 Pounds on the Interstate System and Trucks Over STAA Lengths on the National Network

* * * * *

VEHICLE COMBINATIONS SUBJECT TO PUB. L. 102–240

State	1	2	3
	Truck tractor and *2* trailing units	Truck tractor and *3* trailing units	Other
* *	* *	* *	*
Michigan	58′ 164K	No	63′
* *	* *	* *	*

* * * * *

State: Michigan

Combination: Truck-trailer

Length of Cargo-Carrying Units: 63 feet

Operational Conditions:

Weight: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

Driver: The driver must have a commercial driver's license with appropriate endorsement.

Vehicle: The overall length of this combination is limited to 70 feet. The only cargo that may be carried is saw logs, pulpwood, and tree length poles.

Permit: None required.

Access: All NN routes.

Routes: All NN routes.

Legal Citations: Michigan Public Act 300, section 257.719.

* * * * *

7. Part 658 is amended by adding appendix D to read as follows:

Appendix D to Part 658—Devices That Are Excluded From Measurement of the Length or Width of a Commercial Motor Vehicle

The following devices are excluded from measurement of the length or width of a commercial motor vehicle, as long as they do not carry property and do not exceed the dimensional limitations included in § 658.16. This list is not exhaustive.

1. All devices at the front of a semitrailer or trailer including, but not limited to, the following:

(a) A device at the front of a trailer chassis to secure containers and prevent movement in transit;

(b) A front coupler device on a semitrailer or trailer used in road and rail intermodal operations;

(c) Aerodynamic devices, air deflector;

(d) Air compressor;

(e) Certificate holder (manifest box);

(f) Door vent hardware;

(g) Electrical connector;

(h) Gladhand;

(i) Handhold;

(j) Hazardous materials placards and holders;

(k) Heater;

(l) Ladder;

(m) Non-load carrying tie-down devices on automobile transporters;

(n) Pickup plate lip;

(o) Pump offline on tank trailer;

(p) Refrigeration unit;

(q) Removable bulkhead;

(r) Removable stakes;

(s) Stabilizing jack (anti-nosedive device);

(t) Stake pockets;

(u) Step;

(v) Tarp basket;

(w) Tire carrier; and

(x) Uppercoupler.

2. Devices excluded from length measurement at the rear of a semitrailer or trailer including, but not limited to, the following:

(a) Handhold;

(b) Hazardous materials placards and holders;

(c) Ladder;

(d) Pintle hook;

(e) Removable stakes;

(f) Splash and spray suppression device;

(g) Stake pockets; and

(h) Step.

3. Devices excluded from width determination, not to exceed 3 inches from the side of the vehicle including, but not limited to, the following:

(a) Corner caps;

(b) Hazardous materials placards and holders;

(c) Lift pads for trailer on flatcar (piggyback) operation;

(d) Rain gutters;

(e) Rear and side door hinges and their protective hardware;

(f) Side marker lamps;

(g) Structural reinforcement for side doors or intermodal operation (limited to 1 inch from the side within the 3 inch maximum extension);

(h) Tarping systems for open-top trailers;

(i) Movable devices to enclose the cargo area of flatbed semitrailers or trailers, usually called tarping systems, where no component part of the system extends more than 3 inches from the sides or back of the vehicle when the vehicle is in operation. This exclusion applies to all component parts of tarping systems, including the transverse structure at the front of the vehicle to which the sliding walls and roof of the tarp mechanism are attached, provided the structure is not also intended or designed to comply with 49 CFR 393.106, which requires a headerboard strong enough to prevent cargo from penetrating or crushing the cab; the transverse structure may be up to 108 inches wide if properly centered so that neither side extends more than 3 inches beyond the structural edge of the vehicle. Also excluded from measurement are side rails running the length of the vehicle and rear doors, provided the only function of the latter, like that of the transverse structure at the front of the vehicle, is to seal the cargo area and anchor the sliding walls and roof. On the other hand, a headerboard designed to comply with 49 CFR 393.106 is load bearing and thus limited to 102 inches in width. However, the ''wings'' designed to close the gap between such a headerboard and the movable walls and roof of a tarping system are width exclusive, provided they are add-on pieces designed to bear only the load of the tarping system itself and are not integral parts of the load-bearing headerboard structure;

(j) Tie-down assembly on platform trailers;

(k) Wall variation from true flat; and

(l) Weevil pins and sockets on low-bed trailers.

[FR Doc. 02–7359 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 20, 570, 954, and 1003

[Docket No. FR–4747–C–01]

Technical Corrections to Certain HUD Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; technical corrections.

SUMMARY: This final rule amends several Department regulations to remove obsolete or incorrect references and to advise of a new office location.

DATES: *Effective Date:* April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: This final rule makes technical corrections to several regulations, to remove obsolete references or incorrect citations. This rule also informs interested parties of a new mailing address for the HUD Board of Contract Appeals.

In 24 CFR part 20, § 20.3 is revised to show the new address, telephone number, and FAX number of the HUD Board of Contract Appeals (HUDBCA). The HUDBCA is now located at 1707 H Street, NW., Eleventh Floor, Washington, DC 20006. The new telephone and FAX numbers are (202) 254–0000 and (202) 254–0011, respectively.

This rule also amends the regulations at 24 CFR 570.489(l), 954.4(i), and 1003.608 to remove the reference to ''appendix B to part 24.'' As discussed earlier in this section, there is no appendix B to part 24.

Findings and Certifications

Environmental Review

This final rule removes obsolete and incorrect references and provides information on a new office location and website. The rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, in accordance with 24 CFR 50.19(c)(1), this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in expenditure by State, local, or tribal governments, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

List of Subjects

24 CFR Part 20

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies).

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory,

Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 954

Administrative practice and procedure, Grant programs-housing and community development, Grant programs-Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs-housing and community development, Grant programs-Indians, Indians, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 20, 570, 954, and 1003 as follows:

PART 20—BOARD OF CONTRACT APPEALS

1. The authority citation for 24 CFR part 20 continues to read as follows:

Authority: 41 U.S.C. 601–613; 42 U.S.C. 3535(d).

2. Section 20. 3 is amended by revising paragraph (a) to read as follows:

§ 20.3 Organization and location of the Board.

(a) *Location.* The Board is located at 1707 H Street, NW., Eleventh Floor, Washington, DC 20006. Mail and non-postal delivery may be sent to the Board at this address. Mail also may be addressed to: Board of Contract Appeals, U.S. Department of Housing and Urban Development, Room 2131, 451 Seventh Street, SW., Washington, DC 20410–0001. The telephone number of the Board is (202) 254–0000. (This is not a toll-free number.) For learning or speech-impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1–800–877–8339. The facsimile number is (202) 254–0011.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

3. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

4. Section 570.489 is amended by revising paragraph (l) to read as follows:

§ 570.489 Program administrative requirements.

* * * * *

(l) *Debarment and suspension.* As required by 24 CFR part 24, each CDBG participant shall require participants in lower tier covered transactions to include a certification that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the covered transaction, in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification, unless it knows the certification is erroneous.

* * * * *

PART 954—INDIAN HOME PROGRAM

5. The authority citation for 24 CFR part 954 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

6. Section 954.4 is amended by revising paragraph (i) to read as follows:

§ 954.4 Other Federal requirements.

* * * * *

(i) *Debarment and suspension.* As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., sub-contractors) to include a certification that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the covered transaction, in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification unless it knows the certification is erroneous.

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

7. The authority citation for 24 CFR part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

8. Section 1003.608 is revised to read as follows:

§ 1003.608 Debarment and suspension.

As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., contractors and sub-contractors) to include a certification that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the covered transaction, in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification, unless it knows the certification is erroneous.

Dated: March 22, 2002.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 02–7544 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8986]

RIN 1545–AX94

Determination of Basis of Partner's Interest; Special Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to special rules on determination of basis of a partner's interest under section 705 of the Internal Revenue Code. The final regulations are necessary to coordinate sections 705 and 1032.

DATES: *Effective Date:* These regulations are effective on March 29, 2002.

Applicability Date: These regulations are applicable with respect to sales or exchanges of stock occurring after December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara MacMillan or Rebekah A. Myers (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In Rev. Rul. 99–57 (1999–2 C.B. 678), the IRS issued guidance with respect to the tax consequences for a partnership and a corporate partner where the corporate partner contributes its own stock to the partnership, and the partnership later exchanges the stock with a third party in a taxable transaction. Under that ruling, section 1032 will protect a corporate partner from recognizing gain or loss (to the extent allocated to such partner) when the partnership exchanges stock of the corporate partner in a taxable transaction. The ruling also concludes that, under section 705, the corporate partner increases its basis in its partnership interest by an amount equal to its share of the gain resulting from the partnership's sale or exchange of the stock.

In situations where a corporation acquires an interest in a partnership that holds that corporation's stock, a section

754 election is not in effect with respect to the partnership for the taxable year in which the corporation acquires the partnership interest, and the partnership later sells or exchanges the stock, it may be inconsistent with the intent of sections 705 and 1032 to increase the basis of the corporation's partnership interest by the full amount of the gain that is not recognized.

For instance, assume that a corporation (A) purchases a 50 percent interest in a partnership for $100,000. The partnership's only asset is A stock with a basis of $100,000 and a value of $200,000. If the partnership had not made a section 754 election, then when the partnership disposes of the property for $200,000, A would be allocated $50,000 of gain. Under section 1032, the gain allocated to A would not be subject to tax. If A's basis in the partnership interest were increased to $150,000 under section 705(a)(1), A would recognize a corresponding $50,000 loss (or reduced gain) upon a subsequent sale of the partnership interest. In this situation, it would be inconsistent with the intent of sections 705 and 1032 to increase the basis of A's partnership interest for the gain that is not recognized. To do so would create a recognizable loss (or reduced gain) in a situation where no economic loss was incurred and no offsetting gain had previously been recognized.

Accordingly, in Notice 99–57 (1999–2 C.B. 692), the IRS announced that it intended to promulgate regulations under section 705 to address certain situations where a corporation acquires an interest in a partnership that holds stock in that corporation, and a section 754 election is not in effect with respect to the partnership for the taxable year in which the corporation acquired the interest. The IRS announced that rules regarding tiered-entity structures also would be included in the regulations. The IRS requested comments as to the appropriate scope of the regulations regarding other situations where the price paid for a partnership interest reflects built-in gain or accrued income items that will not be subject to tax, or built-in loss or accrued deductions that will be permanently denied, when allocated to the transferee partner, and the partnership has not made an election under section 754. No formal comments were received.

On January 3, 2001, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–106702–00, 2001–4 I.R.B. 424) under section 705 of the Internal Revenue Code (Code) in the **Federal Register** (66 FR 315). Only one commentator submitted written comments in response to the notice of proposed rulemaking, and no public hearing was requested or held. After consideration of the comment, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Contents

1. Overview of Provisions

As discussed in Notice 99–57, these final regulations are being issued in order to prevent inappropriate increases or decreases in the adjusted basis of a corporate partner's interest in a partnership resulting from the partnership's disposition of the corporate partner's stock.

The final regulations set forth a detailed statement of the purpose for these regulations which is consistent with the discussion in Notice 99–57. The final regulations then provide a specific rule implementing this purpose in situations where a corporate partner holds a direct interest in a partnership that owns stock of the corporate partner. This rule applies where a corporation acquires an interest in a partnership that holds stock in that corporation (or the partnership subsequently acquires stock in that corporation in an exchanged basis transaction), the partnership does not have an election under section 754 in effect for the year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the taxable year in which the corporation acquired the interest, a section 754 election had been in effect.

The purpose of these final regulations cannot be avoided through the use of tiered partnerships or other arrangements. For example, the final regulations provide that if a corporation acquires an indirect interest in its own stock through a chain of two or more partnerships (either where the corporation acquires a direct interest in a partnership or where one of the partnerships in the chain acquires an interest in another partnership), and gain or loss from the sale or exchange of the stock is subsequently allocated to the corporation, then the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of the final regulations. As stated above, the final regulations include a statement describing the purpose of these regulations which is intended to guide taxpayers in making basis adjustments in the tiered partnership context. In addition, the final regulations include two examples illustrating the basis adjustments that are required by the final regulations where a corporation acquires an indirect interest in its own stock through a chain of two or more partnerships.

2. The Secretary's Authority

The only comment received in response to the notice of proposed rulemaking discussed the Secretary's authority under section 705 to issue the regulations as proposed. Specifically, the comment suggested that the regulations could be challenged as inconsistent with the plain language of section 705. The comment acknowledged that the proposed regulations are a reasonable interpretation of section 705, but argued that the aggregate treatment of partnerships in the context of section 1032 provides a stronger basis for the Secretary's authority.

Accordingly, the final regulations clarify that the authority for the regulations includes both sections 705 and 1032. As explained in Rev. Rul. 99–57, the use of the aggregate theory of partnerships in the context of section 1032 is necessary to carry out the intent of that section. To reflect this application of the aggregate theory of partnerships and prevent any unintended benefit or detriment to the partners, appropriate adjustments under section 705 must be made to a corporate partner's outside basis. See H.R. Rep. No. 1337, 83d Cong., 2d Sess. 225 (1954); S. Rep. No. 1337, 83d Cong. 2d Sess. 384 (1954). Thus, the regulations provide the mechanical rules necessary to implement Congressional intent under both sections 705 and 1032.

3. Technical Correction Relating to Tiered Partnerships

The comment suggested technical changes to the proposed regulations to prevent taxpayers in tiered partnership situations from inappropriately allocating to the corporate partner a loss resulting from a sale of a lower-tier partnership (LTP) interest that is attributable to gain allocated to and recognized by the noncorporate partners upon the LTP's sale of the corporate partner's stock. The final regulations include modifications to prevent such inappropriate allocations.

4. De Minimis Rule

The comment suggested that an elective *de minimis* rule would be appropriate as a matter of administrative convenience. However, after considering the purpose of these regulations and issues of administrative burden and technical complexity, Treasury and the IRS have determined that a *de minimis* rule is unnecessary.

5. Scope of the Regulations

The comment suggested that the regulations provide guidance with respect to the issues addressed in Rev. Rul. 96–10 (1996–1 C.B. 138) (partners' bases in their partnership interests are increased to reflect gain from the sale of partnership property that is not recognized under sections 267(d) and 707(b)(1)) and Rev. Rul. 96–11 (1996–1 C.B. 140) (a charitable contribution of property by a partnership reduces each partner's basis in the partnership by the partner's share of the partnership's basis in the property contributed). Treasury and the IRS believe that these issues are beyond the scope of these regulations. Accordingly, this comment is not addressed in these regulations.

6. Other Developments

The notice of proposed rulemaking issued elsewhere in this issue of the **Federal Register** addresses remaining issues that Treasury and the IRS considered during the development of the final regulations. Specifically, the proposed regulations apply principles similar to those applied in the final regulations where a corporation's indirect interest in its own stock held through one or more partnerships increases as the result of a distribution of partnership property to another partner and the partnership does not have a section 754 election in effect at the time of the distribution. In addition, the proposed regulations clarify that references in the regulations to stock of a corporate partner include any position in stock of a corporate partner to which section 1032 applies. Certain minor, nonsubstantive changes were made to the final regulations to accommodate the eventual incorporation of the proposed regulations.

Special Analyses

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

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding a citation to read in part as follows:

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

Section 1.705–2 also issued under 26 U.S.C. 705 and 1032. * * *

2. Section 1.705–1 is amended by adding paragraph (a)(7) to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(7) For basis adjustments necessary to coordinate sections 705 and 1032 in certain situations in which a partnership disposes of stock of a corporation that holds a direct or indirect interest in the partnership, see § 1.705–2.

* * * * *

3. Section 1.705–2 is added to read as follows:

§ 1.705–2 Basis adjustments coordinating sections 705 and 1032.

(a) *Purpose.* This section coordinates the application of sections 705 and 1032 and is intended to prevent inappropriate increases or decreases in the adjusted basis of a corporate partner's interest in a partnership resulting from the partnership's disposition of the corporate partner's stock. The rules under section 705 generally are intended to preserve equality between the adjusted basis of a partner's interest in a partnership (outside basis) and such partner's share of the adjusted basis in partnership assets (inside basis). However, in situations where a section 754 election was not in effect for the year in which a partner acquired its interest, the partner's inside basis and outside basis may not be equal. In these situations, gain or loss allocated to the partner upon disposition of the partnership assets that is attributable to the difference between the adjusted basis of the partnership assets absent the section 754 election and the adjusted basis of the partnership assets had a section 754 election been in effect generally will result in an adjustment to the basis of the partner's interest in the partnership under section 705(a). Such gain (or loss) therefore generally will be offset by a corresponding decrease in the gain or increase in the loss (or increase in the gain or decrease in the loss) upon the subsequent disposition by the partner of its interest in the partnership. Where such a difference exists with respect to stock of a corporate partner that is held by the partnership, gain or loss from the disposition of corporate partner stock attributable to the difference is not recognized by the corporate partner under section 1032. To adjust the basis of the corporate partner's interest in the partnership for this unrecognized gain or loss would not be appropriate because it would create an opportunity for the recognition of taxable gain or loss on a subsequent disposition of the partnership interest where no economic gain or loss has been incurred by the corporate partner and no corresponding taxable gain or loss had previously been allocated to the corporate partner by the partnership.

(b) *Single partnership*—(1) *Required adjustments relating to acquisitions of partnership interest.* (i) This paragraph (b)(1) applies in situations where a corporation acquires an interest in a partnership that holds stock in that corporation (or the partnership subsequently acquires stock in that corporation in an exchanged basis transaction), the partnership does not have an election under section 754 in effect for the year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the year in which

the corporation acquired the interest, a section 754 election had been in effect.

(ii) The provisions of this paragraph (b)(1) are illustrated by the following example:

Example. (i) A, B, and C form equal partnership PRS. Each partner contributes $30,000 in exchange for its partnership interest. PRS has no liabilities. PRS purchases stock in corporation X for $30,000, which appreciates in value to $120,000. PRS also purchases inventory for $60,000, which appreciates in value to $150,000. A sells its interest in PRS to corporation X for $90,000 in a year for which an election under section 754 is not in effect. PRS later sells the X stock for $150,000. PRS realizes a gain of $120,000 on the sale of the X stock. X's share of the gain is $40,000. Under section 1032, X does not recognize its share of the gain.

(ii) Normally, X would be entitled to a $40,000 increase in the basis of its PRS interest for its allocable share of PRS's gain from the sale of the X stock, but a special rule applies in this situation. If a section 754 election had been in effect for the year in which X acquired its interest in PRS, X would have been entitled to a basis adjustment under section 743(b) of $60,000 (the excess of X's basis for the transferred partnership interest over X's share of the adjusted basis to PRS of PRS's property). See § 1.743–1(b). Under § 1.755–1(b), the basis adjustment under section 743(b) would have been allocated $30,000 to the X stock (the amount of the gain that would have been allocated to X from the hypothetical sale of the stock), and $30,000 to the inventory (the amount of the gain that would have been allocated to X from the hypothetical sale of the inventory).

(iii) If a section 754 election had been in effect for the year in which X acquired its interest in PRS, the amount of gain that X would have recognized upon PRS's disposition of X stock (absent the application of section 1032) would be $10,000 (X's share of PRS's gain from the stock sale, $40,000, minus the amount of X's basis adjustment under section 743(b), $30,000). See § 1.743–1(j). Accordingly, the increase in the basis of X's interest in PRS is $10,000.

(2) [Reserved]

(c) *Tiered partnerships and other arrangements*—(1) *Required adjustments.* The purpose of these regulations as set forth in paragraph (a) of this section cannot be avoided through the use of tiered partnerships or other arrangements. For example, if a corporation acquires an indirect interest in its own stock through a chain of two or more partnerships (either where the corporation acquires a direct interest in a partnership or where one of the partnerships in the chain acquires an interest in another partnership), and gain or loss from the sale or exchange of the stock is subsequently allocated to the corporation, then the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of this section.

(2) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. Acquisition of upper-tier partnership interest by corporation. (i) A, B, and C form a partnership (UTP), with each partner contributing $25,000. UTP and D form a partnership (LTP). UTP contributes $75,000 in exchange for its interest in LTP, and D contributes $25,000 in exchange for D's interest in LTP. Neither UTP nor LTP has any liabilities. LTP purchases stock in corporation E for $100,000, which appreciates in value to $1,000,000. C sells its interest in UTP to corporation E for $250,000 in a year for which an election under section 754 is not in effect for UTP or LTP. LTP later sells the E stock for $2,000,000. LTP realizes a $1,900,000 gain on the sale of the E stock. UTP's share of the gain is $1,425,000, and E's share of the gain is $475,000. Under section 1032, E does not recognize its share of the gain.

(ii) With respect to the basis of UTP's interest in LTP, if all of the gain from the sale of the E stock (including E's share) were to increase the basis of UTP's interest in LTP, UTP's basis in such interest would be $1,500,000 ($75,000 + $1,425,000). The fair market value of UTP's interest in LTP is $1,500,000. Because UTP did not have a section 754 election in effect for the taxable year in which E acquired its interest in UTP, UTP's basis in the LTP interest does not reflect the purchase price paid by E for its interest. Increasing the basis of UTP's interest in LTP by the full amount of the gain that would be recognized (in the absence of section 1032) on the sale of the E stock preserves the conformity between UTP's inside basis and outside basis with respect to LTP (i.e., UTP's share of LTP's cash is equal to $1,500,000, and UTP's basis in the LTP interest is $1,500,000) and appropriately would cause UTP to recognize no gain or loss on the sale of UTP's interest in LTP immediately after the sale of the E stock. Accordingly, increasing the basis of UTP's interest in LTP by the entire amount of gain allocated to UTP (including E's share) from LTP's sale of the E stock is consistent with the purpose of this section. The $1,425,000 of gain allocated by LTP to UTP will increase the adjusted basis of UTP's interest in LTP under section 705(a)(1). The basis of UTP's interest in LTP immediately after the sale of the E stock is $1,500,000.

(iii) With respect to the basis of E's interest in UTP, if E's share of the gain allocated to UTP and then to E were to increase the basis of E's interest in UTP, E's basis in such interest would be $725,000 ($250,000 + $475,000) and the fair market value of such interest would be $500,000, so that E would recognize a loss of $225,000 if E sold its interest in UTP immediately after LTP's disposition of the E stock. It would be inappropriate for E to recognize a taxable loss of $225,000 upon a disposition of its interest in UTP because E would not incur an economic loss in the transaction, and E did not recognize a taxable gain upon LTP's disposition of the E stock that appropriately would be offset by a taxable loss on the disposition of its interest in UTP. Accordingly, increasing E's basis in its UTP interest by the entire amount of gain allocated to E from the sale of the E stock is not consistent with the purpose of this section. (Conversely, because A and B were allocated taxable gain on the disposition of the E stock, it would be appropriate to increase A's and B's bases in their respective interests in UTP by the full amount of the gain allocated to them.)

(iv) The appropriate basis adjustment for E's interest in UTP upon the disposition of the E stock by LTP can be determined as the amount of gain that E would have recognized (in the absence of section 1032) upon the sale by LTP of the E stock if both UTP and LTP had made section 754 elections for the taxable year in which E acquired the interest in UTP. If section 754 elections had been in effect for UTP and LTP for the year in which E acquired E's interest in UTP, the following would occur. E would be entitled to a $225,000 positive basis adjustment under section 743(b) with respect to the property of UTP. The entire basis adjustment would be allocated to UTP's only asset, its interest in LTP. In addition, the sale of C's interest in UTP would be treated as a deemed sale of E's share of UTP's interest in LTP for purposes of sections 754 and 743. The deemed selling price of E's share of UTP's interest in LTP would be $250,000 (E's share of UTP's adjusted basis in LTP, $25,000, plus E's basis adjustment under section 743(b) with respect to the assets of UTP, $225,000). The deemed sale of E's share of UTP's interest in LTP would trigger a basis adjustment under section 743(b) of $225,000 with respect to the assets of LTP (the excess of E's share of UTP's adjusted basis in LTP, including E's basis adjustment ($225,000), $250,000, over E's share of the adjusted basis of LTP's property, $25,000). This $225,000 adjustment by LTP would be allocated to LTP's only asset, the E stock, and would be segregated and allocated solely to E. The amount of LTP's gain from the sale of the E stock (before considering section 743(b)) would be $1,900,000. E's share of this gain, $475,000, would be offset in part by the $225,000 basis adjustment under section 743(b), so that E would recognize gain equal to $250,000 in the absence of section 1032.

(v) If the basis of E's interest in UTP were increased by $250,000, the total basis of E's interest would equal $500,000. This would conform to E's share of UTP's basis in the LTP interest ($1,500,000 × 1/3 = $500,000) as well as E's indirect share of the cash held by LTP ((1/3 × 3/4) × $2,000,000 = $500,000). Such a basis adjustment does not create the opportunity for the recognition of an inappropriate loss by E on a subsequent disposition of E's interest in UTP and is consistent with the purpose of this section. Accordingly, under this paragraph (c), of the $475,000 gain allocated to E, only $250,000 will apply to increase the adjusted basis of E in UTP under section 705(a)(1). E's adjusted basis in its UTP interest following the sale of the E stock is $500,000.

Example 2. Acquisition of lower-tier partnership interest by upper-tier partnership. (i) A, corporation B, and C form

an equal partnership (UTP), with each partner contributing $100,000. D, E, and F also form an equal partnership (LTP), with each partner contributing $30,000. LTP purchases stock in corporation B for $90,000, which appreciates in value to $900,000. LTP has no liabilities. UTP purchases D's interest in LTP for $300,000. LTP does not have an election under section 754 in effect for the taxable year of UTP's purchase. LTP later sells the B stock for $900,000. UTP's share of the gain is $270,000, and B's share of that gain is $90,000. Under section 1032, B does not recognize its share of the gain.

(ii) With respect to the basis of UTP's interest in LTP, if all of the gain from the sale of the B stock (including B's share) were to increase the basis of UTP's interest in LTP, UTP's basis in the LTP interest would be $570,000 ($300,000 + $270,000), and the fair market value of such interest would be $300,000, so that B would be allocated a loss of $90,000 (($570,000—$300,000) × 1/3) if UTP sold its interest in LTP immediately after LTP's disposition of the B stock. It would be inappropriate for B to recognize a taxable loss of $90,000 upon a disposition of UTP's interest in LTP. B would not incur an economic loss in the transaction, and B was not allocated a taxable gain upon LTP's disposition of the B stock that appropriately would be offset by a taxable loss on the disposition of UTP's interest in LTP. Accordingly, increasing UTP's basis in its LTP interest by the gain allocated to B from the sale of the B stock is not consistent with the purpose of this section. (Conversely, because E and F were allocated taxable gain on the disposition of the B stock, it would be appropriate to increase E's and F's bases in their respective interests in LTP by the full amount of such gain.)

(iii) The appropriate basis adjustment for UTP's interest in LTP upon the disposition of the B stock by LTP can be determined as the amount of gain that UTP would have recognized (in the absence of section 1032) upon the sale by LTP of the B stock if the portion of the gain allocated to UTP that subsequently is allocated to B were determined as if LTP had made an election under section 754 for the taxable year in which UTP acquired its interest in LTP. If a section 754 election had been in effect for LTP for the year in which UTP acquired its interest in LTP, then with respect to B, the following would occur. UTP would be entitled to a $90,000 positive basis adjustment under section 743(b), allocable to B, in the property of LTP. The entire basis adjustment would be allocated to LTP's only asset, its B stock. The amount of LTP's gain from the sale of the B stock (before considering section 743(b)) would be $810,000. UTP's share of this gain, $270,000, would be offset, in part, by the basis adjustment under section 743(b), so that UTP would recognize gain equal to $180,000.

(iv) If the basis of UTP's interest in LTP were increased by $180,000, the total basis of UTP's partnership interest would equal $480,000. This would conform to the sum of UTP's share of the cash held by LTP ((1/3 × $900,000 = $300,000) and the taxable gain recognized by A and C on the disposition of the B stock that appropriately may be offset on the disposition of their interests in UTP ($90,000 + $90,000 = $180,000). Such a basis adjustment does not inappropriately create the opportunity for the allocation of a loss to B on a subsequent disposition of UTP's interest in LTP and is consistent with the purpose of this section. Accordingly, of the $270,000 gain allocated to UTP, only $180,000 will apply to increase the adjusted basis of UTP in LTP under section 705(a)(1). Such $180,000 basis increase must be segregated and allocated $90,000 each to solely A and C. UTP's adjusted basis in its LTP interest following the sale of the B stock is $480,000.

(v) With respect to B's interest in UTP, if B's share of the gain allocated to UTP and then to B were to increase the basis of B's interest in UTP, B would have a UTP partnership interest with an adjusted basis of $190,000 ($100,000 + $90,000) and a value of $100,000, so that B would recognize a loss of $90,000 if B sold its interest in UTP immediately after LTP's disposition of the B stock. It would be inappropriate for B to recognize a taxable loss of $90,000 upon a disposition of its interest in UTP because B would not incur an economic loss in the transaction, and B did not recognize a taxable gain upon LTP's disposition of the B stock that appropriately would be offset by a taxable loss on the disposition of its interest in UTP. Accordingly, increasing B's basis in its UTP interest by the gain allocated to B from the sale of the B stock is not consistent with the purpose of this section. (Conversely, because A and C were allocated taxable gain on the disposition of the B stock that is a result of LTP not having a section 754 election in effect, it would be appropriate for A and C to recognize an offsetting taxable loss on the disposition of A's and C's interests in UTP. Accordingly, it would be appropriate to increase A's and C's bases in their respective interests in UTP by the amount of gain recognized by A and C.)

(vi) The appropriate basis adjustment for B's interest in UTP upon the disposition of the B stock by LTP can be determined as the amount of gain that B would have recognized (in the absence of section 1032) upon the sale by LTP of the B stock if the portion of the gain allocated to UTP that is subsequently allocated to B were determined as if LTP had made an election under section 754 for the taxable year in which UTP acquired its interest in LTP. If a section 754 election had been in effect for LTP for the year in which UTP acquired its interest in LTP, then with respect to B, the following would occur. UTP would be entitled to a basis adjustment under section 743(b) in the property of LTP of $90,000 with respect to B. The entire basis adjustment would be allocated to LTP's only asset, its B stock. The amount of LTP's gain from the sale of the B stock (before considering section 743(b)) would be $810,000. UTP's share of this gain, $270,000, would be offset, in part, by the $90,000 basis adjustment under section 743(b), so that UTP would recognize gain equal to $180,000. The $90,000 basis adjustment would completely offset the gain that otherwise would be allocated to B.

(vii) If no gain were allocated to B so that the basis of B's interest in UTP was not increased, the total basis of B's interest would equal $100,000. This would conform to B's share of UTP's basis in the LTP interest (($480,000—$180,000 (i.e., A's and C's share of the basis that should offset taxable gain recognized as a result of LTP's failure to have a section 754 election)) × 1/3 = $100,000) as well as B's indirect share of the cash held by LTP ((1/3 × 1/3) × $900,000 = $100,000). Such a basis adjustment does not create the opportunity for the recognition of an inappropriate loss by B on a subsequent disposition of B's interest in UTP and is consistent with the purpose of this section. Accordingly, under this paragraph (c), of the $90,000 gain allocated to B, none will apply to increase the adjusted basis of B in UTP under section 705(a)(1). B's adjusted basis in its UTP interest following the sale of the B stock is $100,000.

(viii) Immediately after LTP's disposition of the B stock, UTP sells its interest in LTP for $300,000. UTP's adjusted basis in its LTP interest is $480,000, $180,000 of which must be allocated $90,000 each to A and C. Accordingly, upon UTP's sale of its interest in LTP, UTP realizes $180,000 of loss, and A and C in turn each realize $90,000 of loss.

(d) [Reserved]

(e) *Effective date.* This section applies to gain or loss allocated with respect to sales or exchanges of stock occurring after December 6, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: March 14, 2002.

Mark Weinberger,

Assistant Secretary of the Treasury.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–02–001]

RIN 2115–AE46

Special Local Regulations; San Diego Crew Classic

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This Notice announces the implementation of the regulations located at 33 CFR 100.1101 for the San Diego Crew Classic on April 6–7, 2002. These regulations will be effective on Mission Bay and are necessary to control vessel traffic in the regulated areas during the event to ensure the safety of participants and spectators.

EFFECTIVE DATES: This section is effective from 6:00 a.m. on April 6, 2002 until 6:00 p.m. on April 7, 2002.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, U. S. Coast

Guard Marine Safety Office San Diego, San Diego, California; Telephone: (619) 683–6495.

SUPPLEMENTARY INFORMATION: *Discussion of Notice.* These Special Local Regulations permit Coast Guard control of vessel traffic in order to ensure the safety of spectator and participant vessels. In accordance with the regulations in 33 CFR 100.1101, no persons or vessels shall block, anchor, or loiter in the regulated area; nor shall any person or vessel transit through the regulated area, or otherwise impede the transit of participant or official patrol vessels in the regulated area, unless cleared for such entry by or through an official patrol vessel acting on behalf of the Patrol Commander. The regulated area is located on Mission Bay in that portion bounded by Enchanted Cove, Fiesta Island, Pacific Passage, and DeANza Point. Pursuant to 33 CFR 100.1101(b)(3), Commanding Officer, Coast Guard Activities San Diego is designated the Patrol Commander for this event. He has authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard.

Good Cause Statement. Good cause exists for publishing this Notice of Implementation less than 30 days before the event because there is an immediate need to protect the crew boat racers from any motorized boats in the vicinity. This need was balanced against the principle that all affected persons should be afforded a reasonable time to prepare for the effective date of the rule. Because general notice of this rule is published in the Code of Federal Regulations and the general notice is being followed by this Notice of Implementation, affected persons will have received adequate notice that this rule would come into effect.

Dated: March 19, 2002.

D.C. Folsom,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 02–7712 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–036]

Drawbridge Operation Regulations: New Rochelle Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Glen Island Bridge, mile 0.8, across New Rochelle Harbor at New Rochelle, New York. This temporary deviation will allow the bridge to remain closed to navigation from 11 p.m. to 7 a.m., Sunday through Friday, from April 29, 2002 through June 26, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from April 29, 2002 through June 26, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The bridge owner, Westchester County Department of Public Works, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, replacement of deteriorated concrete and structural supports, at the bridge. The performance of these repairs require the bridge to remain in the closed position.

The Coast Guard and the owner of the bridge coordinated this closure with the mariners that normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system. Therefore, as a result of that coordination effort, a temporary deviation from the drawbridge operation regulations has been approved. Under this temporary deviation the Glen Island Bridge will not open for vessel traffic from 11 p.m. to 7 a.m., Sunday through Friday, from April 29, 2002 through June 26, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 21, 2002.

G.N. Naccara,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–7571 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 02–006]

RIN 2115–AA97

Security Zone; Waters Adjacent to Diablo Canyon Nuclear Power Plant, Avila Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard has established a security zone in the waters adjacent to Diablo Canyon Nuclear Power Plant near Avila Beach, California. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the power plant and individuals near or in the power plant facilities and the surrounding communities. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

DATES: This interim rule is effective at 3:59 p.m. (PDT) on March 29, 2002. Comments and related material must reach the Coast Guard on or before May 28, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, Waterways Management Division, 1001 S. Seaside Avenue, Building 20, San Pedro, California, 90731. The Waterways Management Division maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Division between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Los Angeles-Long Beach 02–006), indicate the specific section of this document to

which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them. In our final rule, we will include a concise general statement of the comments received and identify any changes from the rule based on the comments.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Division at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the terrorist attacks on September 11, 2001 and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established around Diablo Canyon Nuclear Power Plant. This security zone is needed to protect the United States and more specifically the people, waterways, and properties near Diablo Canyon. A Temporary Final Rule (TFR) has been in effect protecting this area since 4:00 p.m. (PDT) on September 28, 2001 and will be expiring 3:59 p.m. (PDT) on March 29, 2002. In order for the enforcement of the security zone to continue without interruption, an interim rule with request for comments will be used instead of the notice of proposed rulemaking procedure. The delay inherent in the NPRM process, and any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to Diablo Canyon Nuclear Power Plant vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by the rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to Diablo Canyon Nuclear Power Plant. Immediate action is required to accomplish these objectives and necessary to continue safeguarding the Diablo Canyon Nuclear Power Plant and its surrounding areas.

For the reasons stated in the paragraph above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on commercial and public structures—the World Trade Center in New York and the Pentagon in Arlington, Virginia—killing large numbers of people and damaging properties of national significance. There is an increased risk that further subversive or terrorist activity may be launched against the United States based on warnings given by national security and intelligence officials. The Federal Bureau of Investigation (FBI) has issued warnings on October 11, 2001 and February 11, 2002 concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan have made it prudent for important U.S. facilities to be on a higher state of alert because Osama Bin Ladin and his Al Qaeda organization, and other similar organizations, have publicly declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a nuclear power plant would have on the surrounding area and communities, security zones are prudent for navigable waterways adjacent to these nuclear power plants. To mitigate the risk of terrorist actions against important U.S. infrastructure, the Coast Guard has increased safety and security measures on the waterfronts of nuclear power plants by establishing security zones to aid in the waterside protection of these facilities. Vessels operating near the Diablo Canyon Nuclear Power Plant present possible platforms from which individuals may gain unauthorized access to the power plant facilities or launch terrorist attacks upon the waterfront structures and adjacent population centers. As a result, the Coast Guard is taking measures to prevent vessels or persons from accessing the navigable waters close to the Diablo Canyon Nuclear Power Plant.

This regulation establishes a security zone in the waters of the Pacific Ocean within a 2,000 yard (approximately one nautical mile) radius of Diablo Canyon Nuclear Power Plant centered at position 35°12′23″ N, 120°51′23″ W. These coordinates are based upon the North American Datum of 1983 (NAD 83). Diablo Canyon Nuclear Power Plant is located adjacent to the Pacific Ocean along California's Central Coast near Avila Beach in San Luis Obispo County. Extensive land-based security measures are already in place to protect Diablo Canyon Nuclear Power Plant from sabotage. Establishing a security zone in the waters adjacent to the power plant will aid in the waterside protection of the facility.

This rulemaking will make permanent the temporary security zone established on October 2, 2001, which was published in the **Federal Register** (66 FR 53713, Oct. 24, 2001) under temporary section 165.T11–055(a)(3) of Title 33 of the Code of Federal Regulations (CFR). In that rulemaking, the Coast Guard established a security zone encompassing the waters within a one nautical mile radius of Diablo Canyon Nuclear Power Plant, which is essentially the same security zone that we are now establishing permanently.

Discussion of Interim Rule

The Coast Guard has established a security zone on the waters within a 2,000 yard radius of Diablo Canyon Nuclear Power Plant centered at position 35°12′23″ N, 120°51′23″ W. [Datum: NAD 83]. This security zone is needed for national security reasons to protect the power plant, the public, transiting vessels, and adjacent waterside facilities from potential subversive acts, accidents, or other events of a similar nature. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. In addition to the authority of section 12 of the PWSA (33 U.S.C. 1231), the authority for this rule includes section 7 of the PWSA (33 U.S.C. 1226).

Vessels or persons violating this section will be subject to the penalties set forth in section 13 of the PWSA (33 U.S.C. 1232). Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties

(imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the patrol and enforcement of this security zone.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The size of the zone encompasses a small portion of the Pacific Ocean located along a jagged and rocky coastline. Due to the naturally hazardous nature of the coastline, we expect most vessels to remain well clear and transit around this zone for safety of navigation reasons. In addition, vessels may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect this rule will affect the following entities, some of which may be small entities: the owners and operators of private and commercial vessels intending to transit or anchor in the Pacific Ocean near Avila Beach, California. The impact to these entities would not, however, be significant since this zone encompasses a small portion of the ocean located along a jagged and rocky portion of the coastline. In addition, vessels may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732–2020.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because it establishes a security zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1155 to read as follows:

§ 165.1155 Security Zone; Diablo Canyon Nuclear Power Plant, Avila Beach, California.

(a) *Location.* The following area is a security zone:

All waters of the Pacific Ocean, from surface to bottom, within a 2,000 yard radius of Diablo Canyon Nuclear Power Plant centered at position 35°12′23″ N, 120°51′23″ W. [Datum: NAD 83].

(b) *Regulations.*

(1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–8724 or on VHF–FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: March 22, 2002.

J.M. Holmes,

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

[FR Doc. 02–7713 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301227; FRL–6829–8]

RIN 2070–AB78

Foramsulfuron; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of foramsulfuron on corn when applied/used as a herbicide. Aventis CropScience USA LP submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting tolerances for foramsulfuron on corn commodities. After review of the data submitted in support to the petition for tolerances, EPA determined that the toxicological profile of foramsulfuron supports a tolerance exemption for this chemical as no adverse effects were observed in the submitted toxicological studies regardless of the route of exposure. This regulation eliminates the need to establish a maximum permissible level for residues of foramsulfuron.

DATES: This regulation is effective March 29, 2002. Objections and requests for hearings, identified by docket control number OPP–301227, must be received on or before May 28, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301227 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.gpo.gov/opptsfrs/home/guidelin.htm

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301227. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of February 7, 2001 (66 FR 9319–9323) (FRL–6765–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 0F6161) by Aventis CropScience USA LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by the petitioner Aventis CropScience USA LP. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of foramsulfuron on corn grain, corn forage, and corn stover. After review of the data submitted in support of the petition for tolerances, EPA determined that the toxicological profile of foramsulfuron supports a tolerance exemption for this chemical as no adverse effects were observed in the submitted toxicological studies regardless of the route of exposure.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by foramsulfuron are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL). There was no lowest observed adverse effect level (LOAEL) in any of the subchronic or chronic toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.1100	Acute Oral	LD_{50}>5,000 mg/kg
870.1200	Acute Dermal	LD_{50}>2,000 mg/kg
870.1300	Acute Inhalation	LC_{50}>5.04 mg/L
870.2400	Primary Eye Irritation	Mild eye irritant
870.2500	Primary Skin Irritation	Not a dermal irritant
870.2600	Dermal Sensitization	Not a dermal sensitizer
870.3100	90–Day oral toxicity rodents	NOAEL = 1,002 mg/kg/day, Highest Dose Tested (HDT)
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 1,000 mg/kg/day, HDT
870.3200	21/28–Day dermal toxicity	NOAEL = 1,000 mg/kg/day, HDT
870.3700	Prenatal developmental in rodents	Maternal and Developmental NOAEL = 1,000 mg/kg/day, HDT
870.3700	Prenatal developmental in nonrodents	Maternal and Developmental NOAEL = 500 mg/kg/day, HDT

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects	Parental/Systemic, Reproductive and Offspring NOAEL = 1,082 mg/kg/day, HDT
870.4100/870.4200	Chronic toxicity and Carcinogenicity rodents	NOAEL = 849 mg/kg/day, HDT No evidence of carcinogenicity
870.4100	Chronic toxicity dogs	NOAEL = 1,000 mg/kg/day, HDT
870.4300	Carcinogenicity mice	NOAEL = 1,115 mg/kg/day, HDT No evidence of carcinogenicity
870.5100	Gene Mutation	Negative
870.5375	Cytogenetics	Negative
870.5385	Other Effects	Negative
870.7485	Metabolism and pharmacokinetics	Primarily excreted in feces as parent compound within 3 days of oral dosing.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Due to low toxicity, it was determined that a dietary risk assessment of foramsulfuron in food is not needed and, therefore, none was conducted.

1. *Food*—i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Since the acute toxicity is low (toxicity categories III and IV) for all tests conducted, the occurrence of an effect of concern as a result of a one day or single exposure is highly unlikely, and, therefore, an acute dietary risk assessment was not conducted.

ii. *Chronic exposure*. There were no observed adverse effects at the highest dose tested (500 mg/kg/day or higher) in any of the subchronic or chronic toxicity tests conducted. The August 1998 OPPTS Series 870 Harmonized Test Guidelines for health effects recommend for subchronic and chronic testing the highest dose tested should not exceed 1,000 mg/kg/day using the procedures described for these studies, unless potential human exposure data indicate the need for higher doses. A dose of 1,000 mg/kg/day is equivalent to a diet in which the pesticide comprises approximately 7% of dietary consumption. Similarly, the lowest high dose tested in the studies, 500 mg/kg/day, is equivalent to a diet in which the pesticide comprises approximately 3.5% of the dietary consumption. In normal food consumption, humans would be exposed to much less foramsulfuron than 3.5% of the dietary consumption. Therefore, it was determined that a chronic dietary risk assessment of foramsulfuron in food is not needed and, therefore, none was conducted.

2. *Drinking water exposure*. The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Drinking water screening concentrations for humans potentially exposed to total residues of foramsulfuron and structurally similar transformation products in surface water were estimated by using the standard, linked PRZM (version 3.12)/EXAMS (version 2.97.5) tier 2 models that the Environmental Fate and Effects Division (EFED) has adapted for an index reservoir. The EFED SCI-GROW2 tier 1 regression model (version 2.1; May 1, 2001) was used for estimating exposure from groundwater. These routinely used models and their descriptions are at the following EPA internet site: http://www.epa.gov/oppefed1/models/water. Results are tabulated and shown in the following discussion. The effect of including structurally similar transformation products and the effect of different time intervals between applications are evaluated in the following discussion.

Based on the PRZM/EXAMS and SCI-GROW models, at the use rate of 0.0365 lb a.i./acre, the estimated environmental concentrations (EECs) of foramsulfuron for acute exposures are estimated to be 1.0 parts per billion (ppb) for surface water and 0.05 ppb for ground water. The EECs for chronic exposures are estimated to be 0.3 ppb for surface water and 0.05 ppb for ground water. These concentrations were compared to the lowest high dose tested in the toxicity studies (500 mg/kg/day) divided by an uncertainty factor of 100, i.e. 5 mg/kg/

day. Using infants as a worst case (1 L water per day, 10 kg body weight), chronic exposure from surface water (EEC = 0.3 ppb) would be 3×10^{-5} mg/kg/day, which represents 6×10^{-4} percent of the 5 mg/kg/day. For acute exposure in surface water, a similar calculation using the 1.0 ppb EEC gives an exposure of 1×10^{-4} mg/kg/day, or 0.002% of the 5 mg/kg/day. For chronic and acute exposure in ground water, the EEC of 0.05 ppb gives an exposure that is 0.0001% of the 5 mg/kg/day. Because the concentrations of foramsulfuron in drinking water result in exposure much less than 5 mg/kg/day, the contribution of consumption of foramsulfuron via drinking water to total dietary consumption of foramsulfuron (food plus water) is not significant.

B. Other Non-Occupational Exposure

The term residential exposure is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Foramsulfuron is not registered or proposed for use on any sites that would result in residential exposure.

V. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity.

EPA does not have, at this time, available data to determine whether foramsulfuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, foramsulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that foramsulfuron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

VI. Determination of Safety for U.S. Population, Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. Since a dietary risk assessment was not conducted for foramsulfuron due to its low toxicity, a safety factor for infants and children is not applicable to the determination of the risk due to exposure of infants and children to foramsulfuron.

2. *Prenatal and postnatal sensitivity*. No significant toxicity or prenatal or postnatal toxicity was seen in any of the studies conducted with foramsulfuron.

3. *Conclusion*. There is a complete toxicity data base for foramsulfuron. Since a dietary risk assessment was not conducted for foramsulfuron due to its low toxicity, a safety factor for infants and children is not applicable to the determination of the risk due to exposure of infants and children to foramsulfuron. Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues. Accordingly, EPA finds that exempting from the requirement of a tolerance will be safe.

VII. Other Considerations

A. Endocrine Disruptors

No special studies have been conducted to investigate the potential of foramsulfuron to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in any of the standard toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

B. Analytical Method(s)

This action is establishing an exemption from the requirement of a tolerance for the reasons described above. For this reason, no analytical method for enforcement purposes is required.

C. Existing Tolerances

There are no existing tolerances for foramsulfuron.

D. International Tolerances

There are no established or proposed Codex Maximum Residue Limits (MRLs) for foramsulfuron.

VIII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301227 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 28, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice.

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

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

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

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

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301227, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IX. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled*Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct

effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: March 15, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1219 is added to subpart D to read as follows:

§ 180.1219 Foramsulfuron; exemption from the requirement of a tolerance.

The pesticide foramsulfuron is exempted from the requirement of a tolerance in corn grain, corn forage, and corn stover when applied as a herbicide in accordance with good agricultural practices.

[FR Doc. 02–7502 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–247; MM Docket No. 01–121, RM–10125]

Radio Broadcasting Services; Manning, Moncks Corner, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission grants a petition for rule making filed by Cumulus Licensing Corp., succeeded by Apex Communications, licensee of Station WHLZ (FM), Manning, South Carolina and reallots Channel 223C from Manning to Moncks Corner, South Carolina, and modifies the license of Station WHLZ to reflect the change of community. Channel 223C can be allotted at Station WHLZ (FM)'s existing site 37.7 kilometers (23.4 miles) north of the community. Coordinates for Channel 223C at Moncks Corner are 33–32–05 NL and 79–59–15 WL.

DATES: Effective March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–121, adopted January 23, 2002 and released February 1, 2002. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCASTING SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Manning, Channel 223C and Channel 233C at Moncks Corner, and adding Channel 223C at Moncks Corner.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7565 Filed 3–28–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–2002–6189]

RIN 9991–AA24

Organization and Delegation of the Powers and Duties to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation delegates to the Commandant, United States Coast Guard, the authority contained in Section 5001(c)(1)(B) of the Oil Pollution Act of 1990 (OPA 90).

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael Pittman (G–MOR–1), (202) 267–6921, United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593.

SUPPLEMENTARY INFORMATION: This rule amends 49 CFR 1.46, by adding a new paragraph (uuu) to reflect the delegation of the Secretary's authority under Section 5001(c)(1)(B) of the Oil Pollution Act of 1990 (OPA 90), (33 U.S.C. 2731). This will allow the Commandant, United States Coast Guard to appoint representatives to the Advisory Board of the Prince William Sound Spill Recovery Institute as specified in the above law. This rule is published as a final rule and is effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, The Secretary, for good cause, finds, under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3), that notice, and the opportunity for public comment before the rule are unnecessary and that the rule should be made effective in less than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.46 is amended by adding the following paragraph (uuu) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(uuu) Carry out the functions and responsibilities and exercise the authorities vested in the Secretary by Section 5001(c)(1)(B) of the Oil Pollution Act of 1990 (OPA 90), 33 U.S.C. 2731, pertaining to appointment authority for a representative to the Advisory Board of the Prince William Sound Spill Recovery Institute.

Issued at Washington, DC this 22nd day of March, 2002.

Norman Mineta,

Secretary of Transportation.

[FR Doc. 02–7714 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 032502E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 26, 2002, until 1200 hrs, A.l.t., August 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 mt. For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest at the beginning of the next season(s) shall be subtracted from or added to the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does not exceed 15,187 mt in any single season. The B season allowance of the pollock TAC in Statistical Area 620 of the GOA is 8,618 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002). The Regional Administrator hereby increases the B season pollock TAC by 2,291 mt. This amount is the portion of the A season pollock under harvest in Statistical Area 620 which provides for an aggregate B season allowance in the Central and Western Regulatory Areas that does not exceed 15,187 mt. In accordance with § 679.20(a)(5)(ii)(C), the B season allowance of pollock TAC in Statistical Area 620 is 10,909 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the pollock TAC in Statistical Area 620 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,809 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 B season pollock TAC specified for Statistical Area 620 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 B season pollock TAC specified for Statistical Area 620 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 25, 2002.

John H. Dunnigan,

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

[FR Doc. 02–7646 Filed 3–26–02; 3:19 pm]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 61
Friday, March 29, 2002

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

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment

AGENCY: Farm Service Agency, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice announces that a direct final rule entitled Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment (Burley Warehouse Designations) published by the Farm Service Agency will take effect without change.

DATES: The direct final rule was effective on February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Ann Wortham at (202) 720–2715, or via electronic mail at *ann_wortham@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Farm Service Agency (FSA) published a direct final rule entitled Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment on January 4, 2002 (67 FR 481) to amend the regulations at 7 CFR 1464 governing the marketing of tobacco. The rule stipulated that its provisions would be effective February 4, 2002, unless adverse comments were received. The Agency received no adverse comments. Accordingly, this notice announces that its provisions have taken effect without change.

To expedite the necessary changes in the event of adverse comments being received on the direct final rule, a proposed rule also entitled Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment, proposing the same changes as in the direct final rule was also published on January 4, 2002 (67 FR 526). If adverse comments had been received on either the direct final or proposed rule, the proposed rule would have been the operative document and the Agency would have addressed the comments and ultimately published a final rule. The Agency received no adverse comments. Consequently, since the direct final rule will take effect, FSA will take no further action on the proposed rule.

All comments received will be maintained as public records. Requests to view comments received on either the direct final or the proposed rule may be made by contacting FSA at the number provided above.

Signed at Washington, D.C. on March 20, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–7560 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191

[T.D. 02–14]

Technical Amendments to the Customs Regulations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections to various authority citations to reflect amendments to the Harmonized Tariff Schedule of the United States implementing the United States-Jordan Free Trade Area Implementation Act, signed September 28, 2001.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings, (202) 927–1415.

SUPPLEMENTARY INFORMATION:

Background

In Chapter I of the Customs Regulations (19 CFR chapter I) there are many general and specific authority citations and some sections that reference certain General Note provisions of the Harmonized Tariff Schedule of the United States (HTSUS).

On September 28, 2001, the United States-Jordan Free Trade Area Implementation Act was signed into law (Pub. L. 107–43, 115 Stat. 243, 19 U.S.C. 2112 note). To implement the provisions of this Act, on December 7, 2001, the President issued Proclamation 7512 (66 FR 64497), the Annex of which modified the HTSUS by, among other things, adding a new General Note and redesignating the General Notes of the HTSUS that followed this addition. Specifically, a new HTSUS General Note 18 was added and HTSUS General Notes 18–23 were redesignated as HTSUS General Notes 19–24, respectively.

Because of the redesignation of General Notes in the HTSUS, the general and specific authority citations and sections in the Customs Regulations that reference certain General Note provisions are no longer accurate.

This document corrects General Note references in 25 parts and in 3 sections of the Customs Regulations (19 CFR parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191, and §§ 24.23, 141.4, and 152.13) to reflect the modification of the HTSUS set forth in Presidential Proclamation 7512.

Inapplicability of Public Notice and Comment Requirement and Delayed Effective Date Requirement

Because these amendments merely correct certain authority citation referencing errors in the Customs Regulations, pursuant to 5 U.S.C. 553(b)(B), Customs finds that good cause exists for dispensing with notice and public procedure as unnecessary. For these same reasons, pursuant to 5 U.S.C. 553(d)(3), Customs finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings.

Amendments to the Regulations

Chapter I of the Customs Regulations (19 CFR chapter I) is amended as set forth below:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

PART 11—PACKING AND STAMPING; MARKING

1. The authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Notes 23 and 24, Harmonized Tariff Schedule of the United States), 1624.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for part 18 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. In § 24.23, the reference in paragraph (c)(1)(v) to ''General Note 18, HTSUS'' is removed and added, in its place, is the reference ''General Note 19, HTSUS''.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The authority citation for part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23; Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

PART 111—CUSTOMS BROKERS

1. The general authority citation for part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

PART 114—CARNETS

1. The authority citation for part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

PART 128—EXPRESS CONSIGNMENTS

1. The authority citation for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

PART 132—QUOTAS

1. The general authority citation for part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * * *

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1304, 1624.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues, and the specific authority for § 141.4 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 19; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Note 4, Harmonized Tariff Schedule of the United States), 1498;

* * * * *

§ 141.4 [Amended]

2. In § 141.4:

a. The reference in paragraph (b)(1) to ''General Note 18'' is removed and added, in its place, is the reference ''General Note 19''; and

b. The reference in the introductory text of paragraph (c) to ''General Note 18(e)'' is removed and added, in its

place, is the reference ''General Note 19(e)''.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 146—FOREIGN TRADE ZONES

1. The authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 23, Harmonized Tariff Schedule of the United States);

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The general authority citation for part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 23 and 24, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The general authority citation for part 152 continues, and the specific authority for § 152.13 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624.

* * * * *

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)).

§ 152.13 [Amended]

2. In § 152.13:

a. The reference in paragraphs (b)(1) and (b)(2) to ''General Note 19'' is removed and added, in its place, is the reference ''General Note 20'';

b. The reference in the introductory text of paragraph (c) and in paragraphs (c)(1), (c)(2), and (c)(3) to ''General Note 19'' is removed and added, in its place, is the reference ''General Note 20''; and

c. The references in paragraph (d) to ''General Note 19'' are removed and added, in their place, are the references ''General Note 20''.

PART 177—ADMINISTRATIVE RULINGS

1. The general authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The authority citation for part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314.

PART 191—DRAWBACK

1. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

Dated: March 25, 2002.

Douglas M. Browning,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–7532 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Parts 123 and 125

[Public Notice 3954]

International Traffic in Arms Regulations; Exemptions for U.S. Institutions of Higher Learning

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by establishing an exemption for accredited U.S. institutions of higher learning from obtaining a license for the permanent export, temporary export, and temporary import of most articles fabricated only for fundamental research purposes covered by Category XV(a) or (e) of the U.S. Munitions List. Consistent with the current exemption found in the regulations on registration of manufacturers and exporters, registration is not required for use of these exemptions.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: David C. Trimble, Director, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Following the March 1999 transfer of commercial communications satellites to the USML required by the National Defense Authorization Act Fiscal Year 1999, some parts of the academic community expressed concern about potential government restriction on disclosure of information in university classrooms by virtue of the application of the International Traffic in Arms Regulations (''ITAR''). The March 1999 transfer of licensing jurisdiction back to State affected only commercial communications satellites and did not affect the continuation of the Department's longstanding jurisdiction over research, experimental, and scientific satellites. To clarify any underlying concerns of the universities, the Department worked with the Office of Science and Technology Policy, the Department of Defense, the National Oceanic and Atmospheric Administration, and the National Aeronautics and Space Administration. The exemptions herein address these concerns and are designed to facilitate the conduct of university-based space research and are fully consistent with the Department's longstanding policy of not regulating fundamental research.

Consistent with NSDD 189 (National Policy on the Transfer of Scientific, Technical and Engineering Information), the Department does not regulate fundamental research and the March 1999 transfer of commercial communications satellites to the USML did not change this policy. Similar concerns that the State Department might regulate academic exchanges of information under the ITAR generated considerable debate in the late 1970s and early 1980s. In response thereto, the State Department published revisions to the ITAR in December 1984, which specifically noted that concern had been expressed that the ITAR could be read in an overbroad manner to encompass exchanges of information in a purely academic setting. See Revisions to the International Traffic in Arms Regulations, Supplementary Information, 49 FR 47683 (Dec. 6, 1984). The Department acknowledged these concerns and took steps to alleviate them. Since 1984, the ITAR has been amended in order to indicate more clearly that publicly available information and academic exchanges

are not treated as controlled technical data.

Most notably, 22 CFR 122.1(b)(4) specifically exempts from the registration requirements of the ITAR ''persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.'' Further, specifically exempted from the definition of technical data is ''information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges, and universities,'' 22 CFR 120.10(a)(5), and information that is in the ''public domain'' if published and generally available and accessible to the public through, for example, sales at newsstands and bookstores, subscriptions, second class mail, and libraries open to the public (22 CFR 120.11). Information is also in the public domain if it is made generally available to the public ''through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public in the United States'' or ''through fundamental research in science and engineering at accredited institutions of higher learning in the U.S., where the resulting information is ordinarily published and shared broadly in the scientific community.'' 22 CFR 120.11(6), (8)

The ITAR amendment herein concerns the transfer of defense articles fabricated only for fundamental research purposes otherwise covered by Category XV (a) or (e) outside of the United States and the provision of defense services and related unclassified technical data for the assembly and integration of such articles into a scientific, research or experimental satellite.

For the export of articles, the exemption allows U.S. accredited institutions of higher learning to export most such articles as long as all of the information about the article, including its design, is in the public domain. Specifically, the export may only be made to accredited institutions of higher learning or government funded research institutions located in certain countries. The exemption cannot be used for items listed in the Missile Technology Control Regime (MTCR) Annex or items designated as significant military equipment in the regulations.

For the provision of technical data and defense services, the exemption allows these same institutions the authority to provide defense services related to the assembly and integration of such articles into a scientific, research or experimental satellite when working with the same set of countries. The exemption does not permit the provision of defense services or technical data for the integration of the satellite or spacecraft to the launch vehicle, or of Missile Technology Control Regime (MTCR) controlled defense services or technical data. Consistent with the definition of export in the ITAR (§ 120.17(4)), exports to an identified country includes those to nationals of such countries in the United States or abroad.

Exporters that have questions about the applicability of these exemptions to specific activities should request an advisory opinion from the Department using the guidance provided in § 126.9 of the regulations. This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Exemption for U.S. Institutions of Higher Learning, 2401 E. Street, NW., 13th Floor, H1304, 2401 E Street, NW., Washington, DC 20037. Such persons must be registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act or be an accredited U.S. institution of higher learning.

List of Subjects

22 CFR Part 123

Arms and munitions, Exports.

22 CFR Part 125

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 123 and 125, are being amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

1. The authority citation for part 123 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

2. Section 123.16(b)(10) is added to read as follows:

§ 123.16 Exemptions of general applicability.

* * * * *

(b) * * *

(10) District Directors shall permit, without a license, the permanent export, and temporary export and return to the United States, by accredited U.S. institutions of higher learning of articles fabricated only for fundamental research purposes otherwise controlled by Category XV (a) or (e) in § 121.1 of this subchapter when all of the following conditions are met:

(i) The export is to an accredited institution of higher learning, a governmental research center or an established government funded private research center located within countries of the North Atlantic Treaty Organization (NATO) or countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 as a major non-NATO ally (and as defined further in section 644(q) of that Act) for purposes of that Act and the Arms Export Control Act, or countries that are members of the European Space Agency or the European Union and involves exclusively nationals of such countries;

(ii) All of the information about the article(s), including its design, and all of the resulting information obtained through fundamental research involving the article will be published and shared broadly within the scientific community, and is not restricted for proprietary reasons or specific U.S. government access and dissemination controls or other restrictions accepted by the institution or its researchers on publication of scientific and technical information resulting from the project or activity (See § 120.11 of this subchapter); and

(iii) If the article(s) is for permanent export, the platform or system in which the article(s) may be incorporated must be a satellite covered by § 125.4(d)(1)(iii) of this subchapter and be exclusively concerned with fundamental research and only be launched into space from

countries and by nationals of countries identified in this section.

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

3. The authority citation for part 125 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658.

4. Section 125.4(d) is added to read as follows:

§ 125.4 Exemptions of general applicability.

* * * * *

(d)(1) Defense services for the items identified in § 123.16(b)(10) of this subchapter exported by accredited U.S. institutions of higher learning are exempt from the licensing requirements of this subchapter when the export is:

(i) To countries identified in § 123.16(b)(10)(i) of this subchapter and exclusively to nationals of such countries when engaged in international fundamental research conducted under the aegis of an accredited U.S. institution of higher learning; and

(ii) In direct support of fundamental research as defined in § 120.11(8) of this subchapter being conducted either at accredited U.S. institutions of higher learning or an accredited institution of higher learning, a governmental research center or an established government funded private research center located within the countries identified in § 123.16(b)(10)(i) of this subchapter; and

(iii) Limited to discussions on assembly of any article described in § 123.16(b)(10) of this subchapter and or integrating any such article into a scientific, research, or experimental satellite.

(2) The exemption in paragraph (d)(1) of this section, while allowing accredited U.S. institutions of higher learning to participate in technical meetings with foreign nationals from countries specified in § 123.16(b)(10)(i) of this subchapter for the purpose of conducting space scientific fundamental research either in the United States or in these countries when working with information that meets the requirements of § 120.11 of this subchapter in activities that would generally be controlled as a defense service in accordance with § 124.1(a) of this subchapter, does not cover:

(i) Any level of defense service or information involving launch activities including the integration of the satellite or spacecraft to the launch vehicle;

(ii) Articles and information listed in the Missile Technology Control Regime (MTCR) Annex or classified as significant military equipment; or

(iii) The transfer of or access to technical data, information, or software that is otherwise controlled by this subchapter.

Dated: March 11, 2002.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 02–7347 Filed 3–28–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 3951]

International Traffic in Arms Regulations; Amendment to the List of Proscribed Destinations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by removing Armenia and Azerbaijan from the list of proscribed destinations for the exports and imports of defense articles and defense services.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Armenia and Azerbaijan were added to the list of proscribed destinations at section 126.1(a) of the ITAR in the **Federal Register** publication of July 22, 1993 (58 FR 39312). The Department of State is amending the ITAR to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Armenia or Azerbaijan. This action is being taken in the interests of foreign policy and national security pursuant to section 38 of the Arms Export Control Act. Requests for licenses or other approvals for Armenia or Azerbaijan involving items covered by the U.S. Munitions List (22 CFR part 121) will be reviewed on a case-by-case basis.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, removal of Armenia and Azerbaijan, 12th Floor, H1200, 2401 E Street NW., Washington, DC 20522–0112. Such persons must be so registered with the Department's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 126, is being amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

2. Section 126.1(a) is revised to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.* Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of the

Congo (formerly Zaire)) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas.

* * * * *

Dated: February 22, 2002.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 02–7346 Filed 3–28–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 1997–2234 (formerly 87–5 and 89–12)]

RIN 2125–AC30

Truck Length and Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the regulations that concern the exclusion of devices from the measurement of vehicle length and width. All previous interpretations related to exclusions from measurements of vehicle length and width are superseded to the extent they are inconsistent with these regulations. Also, a technical correction is being made to the information on length limitations for multiple cargo carrying units in appendix C for the State of Michigan. The primary goal of this proceeding is to consolidate the basic information from all previous policy notices on the topic, and to provide regulatory standards for making future judgments on the length and/or width exclusion status of specific devices.

EFFECTIVE DATE: This final rule is effective April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Klimek, Office of Freight Management and Operations, (202–366–2212); or Mr. Raymond Cuprill, Office of the Chief Counsel (202–366–0791), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401 by using the universal resource locator (URL): *http://dmses.dot.gov.* It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

The first Federal legislation to cover maximum vehicle dimensions, involved establishing a maximum width of 96 inches for vehicles using the Interstate System. This occurred in 1956 as part of the landmark legislation that accelerated construction of the Interstate System. The 1956 law included a ''grandfather'' clause that enabled States to retain regulations in effect on July 1, 1956, if they allowed a vehicle width greater than 96 inches. The grandfather clause also covered any items a State may have excluded from width measurement.

The practice of excluding certain devices from width measurement, however, did not develop as an issue until States were required to begin certifying enforcement of size and weight laws annually to the FHWA in 1975. Certification was the result of the enactment of what is now 23 U.S.C. 141, as part of the Federal-aid Highway Amendments of 1974.

As a result of the expansion of size and weight enforcement brought on by the certification requirement, it came to the attention of the FHWA that only half of the States had a grandfather right to exclude certain devices from width measurement. The remaining States were allowing the exclusions based largely on a definition of vehicle width originally developed by the American Association of State Highway Officials (AASHO)[1] in 1963, and included in AASHO's 1963 ''Policy on Maximum Dimensions and Weights of Motor Vehicles to be Operated Over the Highways of the United States.''[2] The definition read, ''Width: The total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding approved safety devices and tire bulge due to load.''

The differences between the AASHO policy and the FHWA's interpretation of the applicability of grandfather rights, resulted in significant confusion not only for the States, but also for the trucking industry. Since the AASHO policy from 1946 provided the basis for the original 96-inch width legislation, the FHWA determined that the subsequently issued AASHO definition was an acceptable basis on which to revise agency policy. Accordingly, the FHWA adopted the AASHTO definition of vehicle width on June 28, 1979 (44 FR 37710). In taking this action, the FHWA also determined that the only ''approved safety devices'' permitted to exceed 96 inches would be rear-view mirrors, turn signal lamps, and hand-holds for cab entry/egress.

The next significant legislative action on vehicle size was the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424, 96 Stat. 2097). In order to avoid a repeat of the interpretation problems regarding vehicle width, section 411(h) of the STAA gave the Secretary of Transportation the authority to exclude from the measurement of vehicle length any safety and energy conservation devices found necessary for the safe and efficient operation of commercial motor vehicles (CMVs). That authority is now codified at 49 U. S. C. 31111(d). Section 416(b) of the STAA, now 49 U.S.C. 31113(b), authorized similar exclusions when measuring vehicle width. Section 411(h) also provided that no device excluded from length measurement by the Secretary could have, by design or use, the capability to carry cargo.

Since enactment of the STAA, the FHWA has issued three policy notices in the **Federal Register** that identified some 55 devices as length or width exclusive. Copies of the notices are available on-line under the FHWA docket number cited at the beginning of this document. (See 49 FR 23302, June 5, 1984; 51 FR 1367, January 13, 1986; and 52 FR 7834, March 13, 1987.) The

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[1] Now the American Association of State Highway and Transportation Officials (AASHTO).

[2] The current version of this policy titled ''Guide For Maximum Vehicle Weight and Dimensions'' is available from AASHTO by telephone (800) 231–3475, facsimile (800) 525–3362, mail at AASHTO, P.O. Box 96716, Washington, DC 20090–6716, or online at *http://www.transportation.org/publications/bookstore.nsf.*

FHWA has also handled a number of questions concerning specific pieces of equipment over the years.

This action completes a rulemaking process originally initiated through an advance notice of proposed rulemaking (ANPRM) issued on December 26, 1989 (54 FR 52951). The primary goal of this proceeding is to consolidate the basic information from all previous policy notices on the topic, and to provide regulatory standards for making future judgments on the length and/or width exclusion status of specific devices.

A notice of proposed rulemaking (NPRM) to amend the appropriate sections of 23 CFR part 658 was published on August 18, 2000 (65 FR 50471). In response to the NPRM, 57 additional entries were made to the docket. These entries represent 49 sets of comments, as some of the entries were duplicates, or multiple submissions from the same entity. Comments were provided by 12 companies involved in the manufacture or shipping of vehicles and/or related equipment, 11 commercial-vehicle-related industry associations, 10 different State transportation or police agencies, 10 motor carriers, two organizations of State officials, two individuals, one safety advocacy group, and one congressional committee.

Scope and Applicability

The final rule published today applies to vehicles authorized by the provisions of the STAA while operating on the National Network (NN) [3] and routes giving reasonable access to and from the NN. Nothing in this rule, however, would prohibit States from applying the rule to other vehicles and/or highway systems.

The primary goal of this rulemaking is to establish a simplified manner of determining what devices attached to a commercial vehicle are included or excluded when measuring vehicle dimensions for compliance with applicable length and width laws. As noted earlier, this rulemaking began in 1989. As the NPRM explained, however, the FHWA has been issuing interpretations on this subject since the 1970's. The equipment and enforcement practices in use today have evolved over the last quarter century in response to these directives. The intent of this proceeding is to continue to allow virtually all of the equipment and devices the FHWA has previously indicated are, or should be, excludable from the measurement of vehicle length or width. Included are the devices listed in previous **Federal Register** notices, provided they meet the detailed requirements of the rules promulgated today, specifically:

(1) Notice of interpretation (NOI) at 51 FR 1367 (January 13, 1986).

- A device up to 8 inches long at the front of a trailer chassis the purpose of which is to secure containers and prevent movement in transit.

(2) NOI at 52 FR 7834 (March 13, 1987).

- Non-load carrying tie-down devices on automobile transporters;
- Non-load carrying devices falling within the swing radius of the trailer as measured from the kingpin to the front corner of the trailer;
- Any add-on equipment such as lift gates, winches, etc., at the rear of a trailer that do not extend more than 24 inches from the rear of a trailer in the up position;
- Non-rigid aerodynamic devices that do not extend more than 5 feet from the rear of a trailer in the operational position. Such devices shall not obscure tail lamps, turn signals, marker lamps, identification lamps, license plates, hazardous material placards, or any other required safety device;
- A front coupler device on a semitrailer or trailer used in road and rail intermodal operations.

Other devices at the front of a semitrailer or trailer including:

- Aerodynamic device, air deflector;
- Air compressor;
- Certificate holder (manifest box);
- Door vent hardware;
- Electrical connector;
- Gladhand;
- Handhold;
- Hazardous material placard;
- Heater;
- Ladder;
- Pickup plate lip;
- Pump offline on tank trailer;
- Refrigeration unit;
- Removable bulkhead;
- Removable stakes;
- Stabilizing jack (anti-nosedive device);
- Stake pockets;
- Step;
- Tarp basket;
- Tire carrier; and
- Uppercoupler.

Devices at the rear of a semitrailer or trailer including:

- Air compressor;
- Handhold;
- Hazardous material placard;
- Ladder;
- Lift gate;
- Pintle hook;
- Removable stakes;
- Resilient bumper block;
- Splash and spray suppression device;
- Stake pockets; and
- Step.

Devices excluded from width determination, not to exceed 3 inches from the side of the vehicle including:

- Corner caps;
- Hazardous materials placards;
- Lift pads for trailer on flatcar (piggyback) operation;
- Rain gutters;
- Rear and side door hinges and their protective hardware;
- Side marker lamps;
- Tarp and tarp hardware;
- Tie-down assembly on platform trailers;
- Wall variation from true flat; and
- Weevil pins and sockets on low-bed trailers.

Discussion of Comments

The National Truck Equipment Association (NTEA) requested that straight trucks be included in the final rule coverage. Because the STAA is silent with respect to straight trucks, the authority to regulate their operation remains with the States.

The Morgan Corporation, a manufacturer of truck bodies and related equipment, posed several questions:

1. Will changes in the length and width measurements in the Federal regulations supersede the States' rules for length and/or width exclusions, or will the States be empowered to change, add, or delete exclusions as they see fit?

State regulations for STAA vehicles operating on the NN, or routes providing reasonable access to and from the NN, must be in accord with this final rule. States, however, retain the authority to determine the rules that apply to other, non-STAA vehicles wherever they operate.

2. Where is the 3-inch exclusion located? If the vehicle is 96-inches wide, is the allowance 6-inches on each side and front of the vehicle? If the vehicle is 102-inches wide is the allowance 3-inches on each side and the front of the vehicle? Where will the 12-inch allowance for rearview mirrors be measured? If stake pockets, rub rails, and stake racks are present and the total width of the vehicle is 108-inches, will this be legal?

As mentioned earlier, the final rule published today applies to vehicles authorized by the provisions of the

[3] As defined 23 CFR part 658, The National Network is the composite of the individual network of highways in each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under § 658.11(f) or deleted under § 658.11(d), and those portions of the Federal-aid Primary System in existence on June 1, 1991, set out by the FHWA in appendix A to this part.

STAA while operating on the National Network NN and routes giving reasonable access to and from the NN. A 96-inch wide vehicle is not a STAA vehicle at least with respect to its width. The decision as to width of an exclusion zone is a State determination.

As will be explained later in this document, the 12-inch maximum mirror extension proposed in the NPRM is not being adopted. The safe placement of mirrors will be a decision left to the vehicle manufacturers so that the most advantageous designs can be adopted for the various types of commercial vehicles.

If the stake pockets, sub-rails, and stake racks on a 102-inch wide vehicle are located within 3-inches of the side of the cargo-carrying platform, they are legal.

3. The proposed rule discussed a 24-inch lift gate and a 6-inch resilient bumper. Does this mean that a trailer may have a 24-inch wide lift gate that is exempt from length measurement plus a 6-inch resilient bumper attached to the lift gate? Will these extensions be legal?

No, under § 658.16(c) of the final rule, exclusions are specific and may not be added to other excludable devices. Therefore, a vehicle can have the lift gate or the bumper, but not both.

The Western Association of State Highway Transportation Officials (WASHTO) Committee on Highway Transport expressed several concerns. First is a need for clear regulatory language, so that the transportation industry and enforcement community will know which devices are excluded from the length and width determinations. Second, WASHTO believes the NPRM allowed too much room for interpretation which may result in longer and wider trailers. And third, specific items such as roof structures, sidewalls, taillight assemblies, and undercarriage devices should be included in all measurements.

The regulation issued today restates practices that have been widely, though not universally, accepted since the 1970's. It does not authorize incremental expansion of vehicle size. Most of the devices listed in previous **Federal Register** notices on this issue are included in this rule. Devices developed in the future will be covered, as long they meet the dimensional requirements of this final rule, and do not carry cargo.

The Illinois DOT requested publication of a list of ''efficiency enhancing devices'' as part of the final rule. Virtually all of the devices included in the previous **Federal Register** notices on this issue (the NOI's from 1986 and 1987) are listed in this final rule, as well as any additional devices developed since then that the FHWA has indicated should also be excluded from vehicle measurement. Some of these are safety, rather than efficiency-enhancing devices but we see no need to list them separately.

The Oregon DOT expressed concern regarding specific devices, but chief among the State's issues was that the NPRM was too broad in its scope and could easily result in unintentional increases in vehicle width and length. The State's primary example involved use of the rolling tarp systems that have been developed in recent years. In the context of this discussion, a ''tarp system'' or ''rolling tarp system'' refers to the aftermarket system that encloses the cargo area of a flatbed semitrailer. Such systems are designed to be stowed accordion-style at either end of the trailer during loading, and then rolled out and locked in place. To accommodate this type of operation, a two- to three-inch rail is added to the side edge of the flatbed, extending the full length of the trailer. Ribs that provide internal support for the closed system slide or roll along the side rail, depending on the specific design of the system. A bulkhead at the front of the unit and doors at the rear are also generally a part of these systems, and are used to support the tarp in the operational position. Tarp systems will be more fully discussed later in this document. The Oregon position is that even though these systems may have some safety benefit for the operator, the resulting vehicle is in fact 108 inches wide. The State contends that the NOI of 1987 did not intend to allow 108-inch wide trailers under any circumstances.

Trailers may, in fact, be up to 108 inches wide, measured from the outermost points of two 3-inch width exclusive devices. That is neither new nor illegal. It has been the policy of the FHWA since the 1970's to allow a 3-inch width exclusion on either side of a trailer. There is no difference in principle between exclusions for tarp systems and for stake pockets, which have been used on flatbeds for well over half a century. Congress clearly knew of the FHWA policy, and approved it in the STAA.

An ancillary argument of the Oregon DOT to the allowance of tarp systems is that such an action will cause the State to reconsider the availability of several routes from its list of approved reasonable access routes. Again, this final rule does not change existing practice. Any route currently included on the NN, or used for reasonable access, can be reviewed for continuing use under procedures available in this part.

The Wisconsin DOT expressed a general concern similar to that from the Oregon DOT that the NPRM was too expansive about what could be excluded from measurement and that the ultimate result would be wider and longer vehicles. Specifically, Wisconsin is apprehensive that a motor carrier may try to carry additional equipment such as tools, or even decorations, outside of a vehicle to increase the cargo-carrying capability. The exclusion of lifts, bumpers, forklifts and loading dollies would create potential safety problems around the vehicle. The State also commented that the title of the definition ''safety devices-width exclusive'' is misleading as well as vague, and would allow the exclusion of any non-cargo carrying device, including advertising and decorations.

This final rule changes the title of the definition to ''width exclusive devices'' for consistency with length exclusive definition. Both definitions, however, have been changed to clarify that only devices that contribute to a vehicle's safe operation or energy conservation, can be excluded from the length or width of a vehicle. Fork lifts and loading dollies are not excluded from length measurement, as they do not directly contribute to the safe operation of a vehicle, or help to conserve energy. They are carried as needed and if not carried directly on the vehicle, would be considered cargo overhang, subject to State determinations on acceptability.

The Massachusetts State Police also would like to have a list of excludable items published as part of the rule, as the list would then automatically be incorporated into State statutes and make it easier for a magistrate to adjudicate any citations. They also believe that the State should have the basic authority to decide if an appurtenance should be excluded from width measurement.

As stated previously, the list of excludable items previously published as part of earlier NOI's is part of the final rule published today. Each State must have uniform rules with respect to measurement of STAA vehicles. The goal of this final rule is to provide that uniformity and minimize the opportunities for non-uniform treatment among States.

The Truck Trailer Manufacturers Association (TTMA) is an organization that develops and publishes position papers used by the industry to maintain uniform standards in trailer construction and repair. While generally supporting the NPRM, the TTMA

wanted two specific items included in the rule: (1) A one-inch exclusion for structural repairs and reinforcements on side doors, and (2) a reference to a TTMA ''Recommended Practice'' bulletin incorporating all length and width exclusive guidance.

As discussed in the Supplementary Information section of the NPRM, the one-inch exclusion for structural repairs, etc., will continue to be allowed, but within the 3-inch general exclusion. It is not additive, i.e., it does not allow a 3-inch plus a 1-inch width exclusion in the area of the reinforced sections. This exclusion is limited to van (box) semitrailers. Weld-on or bolt-on repairs may be necessary during the life of the unit to maintain the operational safety of the trailer. Vehicles needn't be discarded or completely rebuilt to original specifications when damaged on one side.

This final rule is clear on what is and is not to be excluded from width measurement. The TTMA is free to include the regulatory language as part of its bulletin service for members, but referring to a TTMA bulletin in a regulation could restrict availability of the regulatory information to organization members and/or bulletin subscribers.

Multinational discussions on harmonization of vehicle weights and dimensions have been under way between the United States, Canada, and Mexico since ratification of the North American Free Trade Agreement (NAFTA) in 1994. In recognition of this activity the FHWA is preparing an NPRM to consider an extension from three to four inches of the distance that non-property carrying devices may protrude from the side of a commercial vehicle.

Tarp Systems

As described earlier in this document, a ''tarp system'' or ''rolling tarp system'' refers to the aftermarket system that encloses the cargo area of a flatbed semitrailer. Such systems are designed to be stowed accordion-style at either end of the trailer during loading, and then rolled out and locked in place.

The Illinois, Maryland, and Oregon DOT's oppose rolling tarp systems as they believe these systems result in wider vehicles, i.e., up to 108-inches wide. They claim that the 108-inch bulkheads at the front of the trailer and 108-inch metal doors at the rear, necessary components of certain designs, further support their argument regarding width. Illinois and Maryland also oppose the tarp systems because they provide increased efficiency for only one portion of an industry, an action that these States consider potentially discriminatory in a business sense.

On the other hand, eight motor carriers, seven manufactures, two national associations, one leasing company, and one individual driver, provided support for the continued exclusion of these systems from width enforcement measurement. They argued that (1) national uniformity on treatment of these systems is needed; (2) the tarp systems improve accessibility and safe and efficient loading/unloading; (3) the systems drastically reduce the risk of injury since drivers do not have to climb onto the load to spread and secure heavy tarps; and (4) the systems protect cargo from weather and road debris, as well as protecting surrounding traffic from small bits of the cargo that may work loose. The importance of the driver safety factor has quickly grown to the point where some carriers now use the availability of these systems as a driver recruitment tool.

Rolling tarp systems eliminate the injuries that occur when drivers fall while climbing atop a load to spread and tie down a conventional tarp. This is a very worthwhile improvement in safety. At the same time the agency is cognizant of the potential for misuse of these systems, as the typical design does provide an extra area of flat space, between the support ribs, that could be used to carry cargo. There are several obstacles to loading a flatbed in a manner that would use the extra area provided by the internal rib support rails for cargo. Such a practice would be very time consuming, could damage the tarp fabric and would very likely interfere with the proper operation of the cargo tie down assemblies required for load securement. In addition, once loaded in such a fashion, the support ribs would not slide, thus defeating the efficiency of the system. While we cannot rule out the occasional deliberate misuse of the system, even though that would defeat the purpose of investing in it, the potential for occasional misuse should not disqualify these systems from width-exclusive status, especially in light of the safety advantages accruing daily to the driver/operators using these systems.

These tarp systems qualify as width exclusive if: (1) When the vehicle is in operation, no component of the tarp system extends more than 3-inches laterally beyond the cargo carrying portion of the vehicle, and (2) the only function of the headerboard, a necessary component of these systems, is to provide structural support for the system, and not to comply with the ''front end structure'' cargo support requirements of 49 CFR 393.106. If a tarp system includes rear doors as part of the design, their exclusion from width measurement is based on the same principles as for the headerboard. If the only function of the doors is to complete a seal of the cargo area and anchor the sliding walls, then they would be excluded from width measurement. If however, they are also used to support cargo at the rear, i.e., restrain otherwise unsecured cargo, then they are limited to 102-inches in width. Any wider, and the excludablity of the entire system would be nullified. Any cargo being carried on a flatbed equipped with a tarping system must be secured in compliance with the requirements of 49 CFR part 393, subpart I. Any use of these tarping systems for purposes of cargo securement would disqualify the system as width exclusive.

Recreational Vehicles

When recreational vehicles (RV's) are being moved to the point of customer delivery, e.g., from a manufacturing location to a dealer, or between a dealer and a tradeshow, they are commercial vehicles under the definition of Part 658 (the vehicle itself is the merchandise being transported), with the most pertinent issue being the 102-inch vehicle width limitation. When a customer takes possession, however, their status changes. Unless they are clearly being used in a commercial enterprise, they become private, personal property and are no longer subject to Part 658. Items such as allowable vehicle width become State determinations. RV's often include items that are attached to the sides of the unit for use when it is parked. When the RV's are moving, these devices either fold up or roll up against the body. As long as they remain within the 3-inch zone, States have generally moved to exclude the devices from vehicle width (as long as they do not carry cargo), while the unit is in a commercial status.

Recently, however, more RV's are coming equipped with roll up awnings for use when parked. For stability and strength, more of these awnings are being built into the structure of the RV's. However, when rolled up in the traveling position the awning extends up to 6-inches from the side of the unit. Under current regulation when an RV so equipped is moving as a commercial vehicle, it must be covered by an overwidth special permit, as it has an appurtenance that extends more than 3-inches from the side of the unit. Once a customer takes possession, again assuming private personal use, there is

no Federal requirement that States issue permits, and, in fact, in recent years many States have enacted legislation specifically exempting roll-up awnings from any width requirements for personal use vehicles.

The Wisconsin DOT, Recreational Vehicle Industry Association (RVIA) and Representative Bud Shuster, then chairman of the House Committee on Transportation and Infrastructure, all commented that this ''one-time'' requirement is not in the public interest. All three commented that for the short time and distance (relative to its eventual use) these units are commercial, they should be exempted from any permit requirements. These requirements simply add to the transportation (and eventually buyer) cost, and create unnecessary administrative burdens on State permitting offices already stretched thin with increased commercial needs. What the commenters are proposing would require an amendment of the definition of commercial vehicle used in this part. Such an action is beyond the scope of this rulemaking. However, in deference to these comments, as well as language contained in the Senate Committee on Appropriations report on S. 1178 (a bill making appropriations for DOT for FY 2002 and other purposes), the FHWA will proceed with a separate NPRM to consider appropriate regulatory changes in this area. (See S. Rep. No. 107–38, at 66 (2001)).

Comments on Specific Features of the NPRM

Turn Signals

The Utah DOT, American Trucking Associations (ATA), Commercial Vehicle Safety Alliance (CVSA), the Truck Manufacturer's Association (TMA), Specialized Carriers and Rigging Association (SC&RA), the National Automobile Dealers Association (NADA), and Grote Industries Inc. (a manufacturer of safety equipment), all opposed the 6-inch maximum extension for turn signals. The basis for their opposition was essentially the same: Given the variation in design of tractors, a 6-inch limit is too restrictive and may well make them invisible to other traffic, thus defeating the purpose of turn signals. These commenters also raised the issue of uniform enforcement, questioning where the 6-inches would be measured from, given the designs of truck tractors in use today.

The 6-inch limit was included in the NPRM in response to earlier comments in this rulemaking that some limit was needed to prevent equipment from extending so far that it would interfere with adjacent or oncoming traffic. However, based on the comments received to the NPRM, the final rule simply exempts turn signals from width and length measurement regardless of their dimensions. A no-limit position on signals has been implied in the AASHTO policy [4] since at least 1963, and has been part of the Federal policy since 1979. As no support was provided for a limit, and several good arguments were presented in opposition, the current regulatory language remains in place and turn signals may be located wherever necessary to fulfill their purpose.

Rearview Mirrors

Seven commenters—the ATA, NADA, SC&RA, NATA, TMA, Grote Industries, Inc., and the Colorado State Patrol—opposed the 12-inch maximum extension limit on rearview mirrors. The main theme of this opposition was similar to that expressed against a limit on turn signals. Twelve inches would be too restrictive. Many truck tractors are 96-inches wide while trailers are up to 102-inches wide with a 3-inch allowance for non cargo-carrying devices. A 12-inch limit could make it impossible to comply with Federal Motor Vehicle Safety Standard (FMVSS) number 111,[5] which requires that ''mirrors shall be located so as to provide the driver a view to the rear along both sides of the vehicle * * *'' [49 CFR 571.111 (S8.1)]. Enforcement would be a problem due to the varying designs of truck tractors. As with turn signals, the 12-inch limit was included in the NPRM in response to earlier comments in this proceeding that some limit was needed to prevent equipment from extending so far that it would interfere with adjacent or opposing traffic. However, based on the comments received to the NPRM, the final rule simply exempts rearview mirrors from width and length measurement regardless of their dimensions. The no-limit position on mirrors has been implied in the AASHTO policy since at least 1963, and has been part of Federal regulation since 1984. As no support was provided for a limit, and several good arguments were presented in opposition, as with turn signals the current regulatory wording remains in effect. Rearview mirrors may extend as far as necessary to fulfill their function.

Swing Radius Concept

The ATA commented that the swing radius language in the NPRM for exclusions at the front of a semitrailer or trailer, along with the additional definition, was not necessary, because the mechanics of articulated vehicle operation make any regulatory intervention in this area unnecessary. Swing radius language goes back to the language in the 1987 NOI, wherein any non-load carrying item within the swing radius of a trailer (or semitrailer) was excluded from length or width measurement. Swing radius is the radius from the kingpin to both front corners of the unit, and the area within that radius at the front end of the trailer. The ATA indicated that any devices included on the front of a trailing unit would have to remain within this ''swing radius'' area or run the risk of not clearing the corner of the cab on a turn. Such a situation would obviously cause damage not only to the device, but the cab as well.

A swing radius rule appears to be unnecessary. Accordingly, the language of this final rule simply exempts any non-load carrying device at the front of a trailer or semitrailer from length measurement. No limit is placed on the length of the item as the swing radius of the combination will generally control its size. The FHWA is prepared, however, to re-visit this issue if application of this rule results in vehicle designs or operational conditions that create potential safety problems for adjacent or oncoming traffic.

Three Inch Exclusion at the Front of a Vehicle

The Oregon DOT opposes application of the 3-inch allowance for non-load carrying devices to the front of a vehicle, i.e., the power unit. It indicates that implementation of this provision will simply allow vehicles to be 3 inches longer, by no longer including any type of bumper in the overall measurement of a vehicle until it would extend more than 3 inches.

As we have stated throughout this discussion, the purpose of this rulemaking is to consolidate in a single location the regulatory language for length and width exclusive determinations. Our goal in issuing this final rule is essentially to maintain the status quo with respect to length and width exclusive devices. Insofar as the front of a vehicle is concerned, the NPRM obviously violated the stated intent of maintaining the status quo.

[4] See Footnote #1.

[5] Federal Motor Vehicle Safety Standard (FMVSS) number 111 (49 CFR 571.111) can be obtained through the National Highway Traffic Safety Administration, Publication Orders and Distribution, Suite 6123, 400 Seventh Street, SW., Washington, DC 20590. The standard may also be located through the Government Printing Office's website. The URL is *http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html*. Simply type 49 CFR part 571 Section 111 in the appropriate boxes.

Except for front overhang allowed on automobile transporters, the existing regulatory language in part 658, and other guidance issued by the FHWA over time, does not allow the exclusion from length measurement of any devices at the front of a vehicle. Clearly the NPRM language for proposed § 658.16(b) should not have included the phrase ''the front or'' in referring to the 3-inch exclusion zone. That has been corrected in this final rule; the 3-inch general exclusion for non-load carrying devices does not apply to the front of a commercial vehicle. The only item at the front of a commercial vehicle that is excluded from measurement of the vehicle length is a resilient bumper that may extend up to 6-inches from the front.

The 24-Inch Rear Exclusion

The Oregon DOT commented that the 24-inch exclusion zone at the rear of a vehicle should be explicitly limited to those devices that are needed for loading and unloading the unit, and that any other non-cargo carrying devices should be limited to no more than a 3-inch exclusion. They are concerned that a general 24-inch exclusion zone will be used by industry to extend or locate equipment that is required on a vehicle (such as mud flaps, bumpers, and tail light assemblies) but that is non-load bearing, essentially resulting in a 24-inch longer trailer.

The State's concern is accommodated by this rule. The regulatory language regarding exclusions from length measurement of items at the rear of a vehicle includes the following: ''that do not extend more than 24-inches beyond the rear of the vehicle and are needed for loading or unloading.'' Such devices (and the additional items listed in new appendix D to part 658), aerodynamic devices and resilient bumpers are the only items that are excluded from length measurement at the rear of a semitrailer or trailer. Except for the loading/unloading and aerodynamic devices, and the resilient bumpers, all other excluded devices at the rear of the semitrailer or trailer are limited to a maximum extension of 3-inches from the rear of the unit.

Aerodynamic Devices

The Oregon DOT opposes the allowance of rigid aerodynamic devices at the rear of a vehicle, because its experience has been that carriers often use the interior space to conceal cargo that extends beyond the limit of the vehicle.

Aerodynamic devices on the rear of a vehicle pose a vexing problem. Maximizing fuel economy during vehicle operation is once again becoming an increasingly important factor in the trucking industry, not to mention its importance in managing of the nation's fuel supply. On the other hand, through the development of standardized rear impact guards, the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA) have provided a significantly improved degree of rear underride protection to reduce the often violent results of crashes where an automobile impacts the rear of a truck or semitrailer. In addition, there is, as Oregon points out, the potential for deliberate misuse in order to gain a competitive edge with respect to cargo hauling.

The NPRM included language that would allow flexible aerodynamic devices to extend up to 8 feet. This language was based on a request the FHWA received in 1993 from the developer of such a device. At that time we could not make a determination on the implications for highway safety of allowing this device and indicated that further consideration would be part of this rulemaking. Comments on this aspect of the NPRM were received from two State DOTs (Utah and Maryland) and the Commercial Vehicle Safety Alliance (CVSA). All three comments asked why the FHWA was considering the device, and the State DOTs had concerns over the safety implications for following vehicles of an 8-foot flexible device that might sway or oscillate due to cross winds. Since the original correspondence was received by the FHWA, no additional information has been provided by the developer of the device to indicate any operational experience, or that it has even been allowed to operate in any State. As with tarping systems discussed earlier, the potential for deliberate misuse of these devices should not rule out their use unless widespread deliberate violation becomes endemic with certain types of aerodynamic devices.

The final rule issued today allows certain aerodynamic devices to extend up to 5 feet beyond the rear of a commercial vehicle. A 5-foot device was included in the 1987 NOI. However, because of the need to make such devices compatible with the rear-underride provisions of the NHTSA and FMCSA safety regulations, the rule requires that aerodynamic devices ''have neither the strength, rigidity nor mass to damage a vehicle, or injure a passenger in a vehicle, that strikes a trailer so equipped from the rear.'' The NPRM mentioned aerodynamic devices ''made of flexible material which are inflated by air pressure and lack a rigid structure.'' Such devices would most likely meet the requirements of § 658.16(b)(iv), but other aerodynamic designs may also be consistent with the rule. To repeat, developers of aerodynamic devices should keep in mind that this rule does not exempt motor carriers from complying with the FMCSA's rule (49 CFR 393.86).

The Agency is not in any way minimizing the critical importance of achieving the maximum possible fuel economy in the Nation's transportation system. But we cannot allow a device with the potential of negating the safety gains achieved by the rear underride protection rules.

Inadvertent Restrictions Imposed by a General 3-Inch Exclusion Zone

The TMA comments highlighted two areas where the general 3-inch exclusion zone created by the language of the NPRM would be too restrictive: Steps and handholds for cab entry/egress, and equipment such as winches that are often included at the front of a vehicle for certain vocational applications. As discussed above, the AASHTO has had a ''no limit'' policy on steps and hand holds for cab entry/egress since at least 1963. That policy has been included in part 658 since its initial publication on June 5, 1984 (49 FR 23302). Given that the intention of this rulemaking is essentially to maintain the status quo with respect to length and width exclusive devices, this final rule continues to allow these items, without dimensional limit. The TMA comment concerning the front of the vehicles was the only mention of winches and related equipment. The power units of the STAA vehicles, to which this final rule applies, typically are only used to transport trailers and semitrailers, and for no other function. The TMA comment would appear to be directed to special use single unit vehicles such as tow trucks. Single unit vehicles are not STAA vehicles, and are not covered by these rules. States have complete discretion whether to include or exclude such devices from the length of straight trucks.

Automobile Transporter Support Ramps or ''Flippers'''

The Maryland DOT expressed opposition to treating as length exclusive devices the extendable ramps or ''flippers'' on automobile transporters. The State argued that this proposal was inconsistent with the principle that length exclusive devices not be cargo carrying.

''Flippers'' are used for supporting vehicles that overhang the front or rear

of an automobile transporter. The vehicle overhang provisions of 23 CFR 658.13(e)(1)(ii) are based on the STAA's specialized equipment authority [49 U.S.C. 31111(g)], not its length-exclusive provision [49 U.S.C. 31111(d)]. Congress explicitly designated automobile transporters as specialized equipment, and the FHWA adopted rules that conform to industry practice. For the last decade, the agency has consistently interpreted § 658.13(e)(1)(ii) as allowing the use of retractable platforms to position and secure vehicles. When auto transporters are empty, however, we concluded that these platforms should be included in any length measurement if not retracted. This enables vehicle transporters to maximize the capacity of their equipment, while requiring them to minimize vehicle length when the flippers are not needed. This rule codifies that policy.

Support for the NPRM

Several commenters offered general support for the concept of the NPRM but had additional comments.

The National Automobile Transporters Association (NATA) supported the proposed language regarding retractable platforms or ''flippers'' on automobile transporters. As discussed above, this rule codifies what had previously been FHWA policy on this issue.

The American Bus Association (ABA) supported the overall concept of the NPRM, but would also like to see a separate commercial vehicle designation for motor coaches with its own size and weight rules. Such an action is beyond the scope of this rulemaking.

The National Automobile Dealers Association (NADA) also generally supported the NPRM, but asked that the dimensions of mirrors and turn signals not be limited. As discussed earlier, the final rule adopts that position.

Other Requests

Auto Transporter Bumper Step

The Supplementary Information section of the NPRM discussed the issue of allowing a step across the full width of the front bumper of an automobile transporter, extending outward from the front bumper. The operator would use the step in the loading/unloading process to secure the vehicle being transported at the front of the head rack. A commenter to the ANPRM asked for a 4-inch wide step, while the NPRM indicated that the 3-inch exclusion provided enough room, and if an additional inch was needed, that the step could be recessed in some manner into the front of the unit. The ATA and the NATA provided similar comments on this issue. They contend that in order to avoid regulatory conflict with 49 CFR 399.207(b)(4), [6] the step should be 5-inches deep, extending across the width of the front bumper. As an alternative to the step, the NATA proposed the FHWA consider excluding the front bumper of an auto transporter from length measurement and allow the step to be incorporated, *i.e.*, allow a 5-inch wide bumper to be length excluded.

Neither the specialized equipment rules in § 658.13(e)(1) nor the general length provisions in § 658.13(a)–(d) authorize steps that extend beyond the front bumper of automobile transporters, nor have FHWA interpretations allowed any such devices. The FMCSA's step regulations apply only to ''high profile COE [cab-over-engine] trucks or truck tractors,'' which are rarely used for auto transporters, and they require steps ''on each *side* of the vehicle where a seat is located * * *'' [49 CFR 399.207(b) (emphasis added)], not at the front of the vehicle. All previous Federal statements on length exclusive devices have referred to the trailer or semitrailer.

Allowance of a 5-inch straight edge across the width of a power unit may at times help an operator with vehicle securement on the headrack, although a shorter operator may not be able to reach the equipment. However, that edge could at all times pose a safety threat to any person or object that may come in contact with it, depending on the speed of the vehicle. In addition, the existence of such a step may also be in conflict with 49 CFR 393.203(e), which reads '' The front bumper must not be missing, loosely attached, or protruding beyond the confines of the vehicle so as to create a hazard.''

Earlier in this section, a 3-inch exclusion zone at the front of the vehicle was discussed and rejected. For the same basic reasons, this final rule does not allow any type of step at the front of a vehicle (which for STAA vehicles means the power unit) to be length exclusive. There are alternatives available, if auto transporters must contain a capability for the operator to reach the bottom of the headrack with something other than a ladder.

The only item at the front of a commercial vehicle that is excluded from length measurement by this final rule is a resilient bumper up to 6 inches deep. In order to avoid undue hardship for operators of auto transporters that already include a step, the FHWA will allow a period of 3 years from the effective date of this rule for existing vehicles to comply with this rule. It will be the responsibility of the operator of the unit to show proof of the existence of the step prior to the effective date of this rule. Such proof can be in the form of a work order for equipment modification, a receipt for purchase and installation of the piece, or any similar type of documentation. However, three years after the effective date of this rule, anything other than a resilient bumper will be included in the vehicle's length.

Dromedary Boxes

The ATA suggested that the agency use this rulemaking as an opportunity to designate truck tractors with dromedary equipment used by the munitions hauling industry as specialized equipment. That is beyond the scope of this rulemaking.

Equipment Grandfathers

The TTMA raised the issue of grandfathering equipment that has been in use since publication of the 1987 NOI, if this final rule were to change application of the length and width exclusive concepts. As we have noted several times throughout this section, the intent of this proceeding is to continue to allow virtually all of the equipment and devices that up to now the FHWA has indicated are, or should be, excludable from the measurement of vehicle length or width. The only equipment grandfathering included in this final rule involves automobile transporters with a step on the front bumper to assist the operator in reaching the headrack, which also causes the unit to exceed the 65- or 75-foot length limits that apply to these transporters.

Multi-Cargo Carrying Limitation Information—Michigan

Information provided by the State of Michigan has shown that the operation of a truck-trailer combination with an overall length of 70 feet used to haul saw logs, pulpwood, and tree length poles, has been legal under State law since May 1990. In bringing this fact to our attention, the State has also provided information in the form of affidavits to show that truck-trailer combinations at the 70-foot length were in operation in the State prior to June 1, 1991. These affidavits are from both State officials and private operators. Appendix C is being revised today to correct this oversight.

[6] 49 CFR part 399, Employee Safety and Health Standards, Subpart L, Step, Handhold, and Deck Requirements for Commercial Motor Vehicles, is available online from the URL: *http://www.access.gpo.gov/nara.*

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This final rule will not adversely affect, in a material way, any sector of the economy. There will not be any additional costs incurred by any affected group as a result of this rule. In addition, this final rule will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs. Therefore a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This action merely replaces previous policy guidance on specific devices that may extend beyond the structural members of a vehicle with a general rule covering how far devices may extend beyond the structural members of vehicles.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or significant federalism implications on States that would limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

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.

Paperwork Reduction Act of 1995

This action does not contain a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property of otherwise have taking implications under Executive Order 125630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The Agency has analyzed this section for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that the rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 658

Grants Program—transportation, Highways and roads, Motor carriers.

Issued on: March 21, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. Revise the authority citation for part 658 to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; 49 CFR 1.48(b)(19) and (c)(19).

2. Amend § 658.5 by revising the definition of ''Length Exclusive Ddevices'', removing the definition of ''Safety Devices-Width Exclusion'' and adding the definition of ''Width Exclusive Devices'' in alphabetical order, to read as follows:

§ 658.5 Definitions.

* * * * *

Length Exclusive Devices. Devices excluded from the measurement of vehicle length. Such devices shall not be designed or used to carry cargo.

* * * * *

Width Exclusive Devices. Devices excluded from the measurement of vehicle width. Such devices shall not be designed or used to carry cargo.

3. In § 658.13, revise paragraph (e)(1)(ii), remove paragraph (f), and redesignate paragraphs (g) and (h) as paragraphs (f) and (g), respectively, to read as follows:

§ 658.13 Length.

* * * * *

(e) * * * (1) * * *

(ii) All length provisions regarding automobile transporters are exclusive of front and rear cargo overhang. No State shall impose a front overhang limitation of less than 3 feet or a rear overhang limitation of less than 4 feet. Extendable ramps or ''flippers'' on automobile transporters that are used to achieve the allowable 3-foot front and 4-foot rear cargo overhangs are excluded from the measurement of vehicle length, but must be retracted when not supporting vehicles.

* * * * *

§ 658.15 [Amended]

4. Amend § 658.15 by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

5. Add § 658.16 to read as follows:

§ 658.16 Exclusions from length and width determinations.

(a) Vehicle components not excluded by law or regulation shall be included in the measurement of the length and width of commercial motor vehicles.

(b) The following shall be excluded from either the measured length or width of commercial motor vehicles, as applicable:

(1) Rear view mirrors, turn signal lamps, handholds for cab entry/egress, splash and spray suppressant devices, load induced tire bulge;

(2) All non-property-carrying devices, or components thereof—

(i) At the front of a semitrailer or trailer, or

(ii) That do not extend more than 3 inches beyond each side or the rear of the vehicle, or

(iii) That do not extend more than 24 inches beyond the rear of the vehicle and are needed for loading or unloading, or

(vi) Listed in appendix D to this part;

(3) Resilient bumpers that do not extend more than 6 inches beyond the front or rear of the vehicle;

(4) Aerodynamic devices that extend a maximum of 5 feet beyond the rear of the vehicle, provided such devices have neither the strength, rigidity nor mass to damage a vehicle, or injure a passenger in a vehicle, that strikes a trailer so equipped from the rear, and provided also that they do not obscure tail lamps, turn signals, marker lamps, identification lamps, or any other required safety devices, such as hazardous materials placards or conspicuity markings; and

(5) A fixed step up to 3 inches deep at the front of an existing automobile transporter until April 29, 2005. It will be the responsibility of the operator of the unit to prove that the step existed prior to April 29, 2002. Such proof can be in the form of a work order for equipment modification, a receipt for purchase and installation of the piece, or any similar type of documentation. However, after April 29, 2005, the step shall no longer be excluded from a vehicle's length.

(c) Each exclusion allowance is specific and may not be combined with other excluded devices.

(d) Measurements are to be made from a point on one side or end of a commercial motor vehicle to the same point on the opposite side or end of the vehicle.

6. Amend appendix C to part 658 by revising the entry for the State of Michigan in the table entitled ''Vehicle Combinations Subject to Pub. L. 102–240'', and by adding a listing for the State of Michigan for a truck-trailer combination vehicle after the existing listing for truck tractor. The amended and added portions of appendix C read as follows:

Appendix C to Part 658—Trucks Over 80,000 Pounds on the Interstate System and Trucks Over STAA Lengths on the National Network

* * * * *

VEHICLE COMBINATIONS SUBJECT TO PUB. L. 102–240

State	1	2	3
	Truck tractor and *2* trailing units	Truck tractor and *3* trailing units	Other
* *	* *	* *	*
Michigan	58′ 164K	No	63′
* *	* *	* *	*

* * * * *

State: Michigan

Combination: Truck-trailer

Length of Cargo-Carrying Units: 63 feet

Operational Conditions:

Weight: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

Driver: The driver must have a commercial driver's license with appropriate endorsement.

Vehicle: The overall length of this combination is limited to 70 feet. The only cargo that may be carried is saw logs, pulpwood, and tree length poles.

Permit: None required.

Access: All NN routes.

Routes: All NN routes.

Legal Citations: Michigan Public Act 300, section 257.719.

* * * * *

7. Part 658 is amended by adding appendix D to read as follows:

Appendix D to Part 658—Devices That Are Excluded From Measurement of the Length or Width of a Commercial Motor Vehicle

The following devices are excluded from measurement of the length or width of a commercial motor vehicle, as long as they do not carry property and do not exceed the dimensional limitations included in § 658.16. This list is not exhaustive.

1. All devices at the front of a semitrailer or trailer including, but not limited to, the following:

(a) A device at the front of a trailer chassis to secure containers and prevent movement in transit;

(b) A front coupler device on a semitrailer or trailer used in road and rail intermodal operations;

(c) Aerodynamic devices, air deflector;

(d) Air compressor;

(e) Certificate holder (manifest box);

(f) Door vent hardware;

(g) Electrical connector;

(h) Gladhand;

(i) Handhold;

(j) Hazardous materials placards and holders;

(k) Heater;

(l) Ladder;

(m) Non-load carrying tie-down devices on automobile transporters;

(n) Pickup plate lip;

(o) Pump offline on tank trailer;

(p) Refrigeration unit;

(q) Removable bulkhead;

(r) Removable stakes;

(s) Stabilizing jack (anti-nosedive device);

(t) Stake pockets;

(u) Step;

(v) Tarp basket;

(w) Tire carrier; and

(x) Uppercoupler.

2. Devices excluded from length measurement at the rear of a semitrailer or trailer including, but not limited to, the following:

(a) Handhold;

(b) Hazardous materials placards and holders;

(c) Ladder;

(d) Pintle hook;

(e) Removable stakes;

(f) Splash and spray suppression device;

(g) Stake pockets; and

(h) Step.

3. Devices excluded from width determination, not to exceed 3 inches from the side of the vehicle including, but not limited to, the following:

(a) Corner caps;

(b) Hazardous materials placards and holders;

(c) Lift pads for trailer on flatcar (piggyback) operation;

(d) Rain gutters;

(e) Rear and side door hinges and their protective hardware;

(f) Side marker lamps;

(g) Structural reinforcement for side doors or intermodal operation (limited to 1 inch from the side within the 3 inch maximum extension);

(h) Tarping systems for open-top trailers;

(i) Movable devices to enclose the cargo area of flatbed semitrailers or trailers, usually called tarping systems, where no component part of the system extends more than 3 inches from the sides or back of the vehicle when the vehicle is in operation. This exclusion applies to all component parts of tarping systems, including the transverse structure at the front of the vehicle to which the sliding walls and roof of the tarp mechanism are attached, provided the structure is not also intended or designed to comply with 49 CFR 393.106, which requires a headerboard strong enough to prevent cargo from penetrating or crushing the cab; the transverse structure may be up to 108 inches wide if properly centered so that neither side extends more than 3 inches beyond the structural edge of the vehicle. Also excluded from measurement are side rails running the length of the vehicle and rear doors, provided the only function of the latter, like that of the transverse structure at the front of the vehicle, is to seal the cargo area and anchor the sliding walls and roof. On the other hand, a headerboard designed to comply with 49 CFR 393.106 is load bearing and thus limited to 102 inches in width. However, the ''wings'' designed to close the gap between such a headerboard and the movable walls and roof of a tarping system are width exclusive, provided they are add-on pieces designed to bear only the load of the tarping system itself and are not integral parts of the load-bearing headerboard structure;

(j) Tie-down assembly on platform trailers;

(k) Wall variation from true flat; and

(l) Weevil pins and sockets on low-bed trailers.

[FR Doc. 02–7359 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 20, 570, 954, and 1003

[Docket No. FR–4747–C–01]

Technical Corrections to Certain HUD Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; technical corrections.

SUMMARY: This final rule amends several Department regulations to remove obsolete or incorrect references and to advise of a new office location.

DATES: *Effective Date:* April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: This final rule makes technical corrections to several regulations, to remove obsolete references or incorrect citations. This rule also informs interested parties of a new mailing address for the HUD Board of Contract Appeals.

In 24 CFR part 20, § 20.3 is revised to show the new address, telephone number, and FAX number of the HUD Board of Contract Appeals (HUDBCA). The HUDBCA is now located at 1707 H Street, NW., Eleventh Floor, Washington, DC 20006. The new telephone and FAX numbers are (202) 254–0000 and (202) 254–0011, respectively.

This rule also amends the regulations at 24 CFR 570.489(l), 954.4(i), and 1003.608 to remove the reference to ''appendix B to part 24.'' As discussed earlier in this section, there is no appendix B to part 24.

Findings and Certifications

Environmental Review

This final rule removes obsolete and incorrect references and provides information on a new office location and website. The rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, in accordance with 24 CFR 50.19(c)(1), this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in expenditure by State, local, or tribal governments, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

List of Subjects

24 CFR Part 20

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies).

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory,

Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 954

Administrative practice and procedure, Grant programs-housing and community development, Grant programs-Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs-housing and community development, Grant programs-Indians, Indians, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 20, 570, 954, and 1003 as follows:

PART 20—BOARD OF CONTRACT APPEALS

1. The authority citation for 24 CFR part 20 continues to read as follows:

Authority: 41 U.S.C. 601–613; 42 U.S.C. 3535(d).

2. Section 20. 3 is amended by revising paragraph (a) to read as follows:

§ 20.3 Organization and location of the Board.

(a) *Location.* The Board is located at 1707 H Street, NW., Eleventh Floor, Washington, DC 20006. Mail and non-postal delivery may be sent to the Board at this address. Mail also may be addressed to: Board of Contract Appeals, U.S. Department of Housing and Urban Development, Room 2131, 451 Seventh Street, SW., Washington, DC 20410–0001. The telephone number of the Board is (202) 254–0000. (This is not a toll-free number.) For learning or speech-impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1–800–877–8339. The facsimile number is (202) 254–0011.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

3. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

4. Section 570.489 is amended by revising paragraph (l) to read as follows:

§ 570.489 Program administrative requirements.

* * * * *

(l) *Debarment and suspension.* As required by 24 CFR part 24, each CDBG participant shall require participants in lower tier covered transactions to include a certification that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the covered transaction, in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification, unless it knows the certification is erroneous.

* * * * *

PART 954—INDIAN HOME PROGRAM

5. The authority citation for 24 CFR part 954 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

6. Section 954.4 is amended by revising paragraph (i) to read as follows:

§ 954.4 Other Federal requirements.

* * * * *

(i) *Debarment and suspension.* As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., sub-contractors) to include a certification that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the covered transaction, in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification unless it knows the certification is erroneous.

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

7. The authority citation for 24 CFR part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

8. Section 1003.608 is revised to read as follows:

§ 1003.608 Debarment and suspension.

As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., contractors and sub-contractors) to include a certification that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the covered transaction, in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification, unless it knows the certification is erroneous.

Dated: March 22, 2002.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 02–7544 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8986]

RIN 1545–AX94

Determination of Basis of Partner's Interest; Special Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to special rules on determination of basis of a partner's interest under section 705 of the Internal Revenue Code. The final regulations are necessary to coordinate sections 705 and 1032.

DATES: *Effective Date:* These regulations are effective on March 29, 2002.

Applicability Date: These regulations are applicable with respect to sales or exchanges of stock occurring after December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara MacMillan or Rebekah A. Myers (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In Rev. Rul. 99–57 (1999–2 C.B. 678), the IRS issued guidance with respect to the tax consequences for a partnership and a corporate partner where the corporate partner contributes its own stock to the partnership, and the partnership later exchanges the stock with a third party in a taxable transaction. Under that ruling, section 1032 will protect a corporate partner from recognizing gain or loss (to the extent allocated to such partner) when the partnership exchanges stock of the corporate partner in a taxable transaction. The ruling also concludes that, under section 705, the corporate partner increases its basis in its partnership interest by an amount equal to its share of the gain resulting from the partnership's sale or exchange of the stock.

In situations where a corporation acquires an interest in a partnership that holds that corporation's stock, a section

754 election is not in effect with respect to the partnership for the taxable year in which the corporation acquires the partnership interest, and the partnership later sells or exchanges the stock, it may be inconsistent with the intent of sections 705 and 1032 to increase the basis of the corporation's partnership interest by the full amount of the gain that is not recognized.

For instance, assume that a corporation (A) purchases a 50 percent interest in a partnership for $100,000. The partnership's only asset is A stock with a basis of $100,000 and a value of $200,000. If the partnership had not made a section 754 election, then when the partnership disposes of the property for $200,000, A would be allocated $50,000 of gain. Under section 1032, the gain allocated to A would not be subject to tax. If A's basis in the partnership interest were increased to $150,000 under section 705(a)(1), A would recognize a corresponding $50,000 loss (or reduced gain) upon a subsequent sale of the partnership interest. In this situation, it would be inconsistent with the intent of sections 705 and 1032 to increase the basis of A's partnership interest for the gain that is not recognized. To do so would create a recognizable loss (or reduced gain) in a situation where no economic loss was incurred and no offsetting gain had previously been recognized.

Accordingly, in Notice 99–57 (1999–2 C.B. 692), the IRS announced that it intended to promulgate regulations under section 705 to address certain situations where a corporation acquires an interest in a partnership that holds stock in that corporation, and a section 754 election is not in effect with respect to the partnership for the taxable year in which the corporation acquired the interest. The IRS announced that rules regarding tiered-entity structures also would be included in the regulations. The IRS requested comments as to the appropriate scope of the regulations regarding other situations where the price paid for a partnership interest reflects built-in gain or accrued income items that will not be subject to tax, or built-in loss or accrued deductions that will be permanently denied, when allocated to the transferee partner, and the partnership has not made an election under section 754. No formal comments were received.

On January 3, 2001, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–106702–00, 2001–4 I.R.B. 424) under section 705 of the Internal Revenue Code (Code) in the **Federal Register** (66 FR 315). Only one commentator submitted written comments in response to the notice of proposed rulemaking, and no public hearing was requested or held. After consideration of the comment, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Contents

1. Overview of Provisions

As discussed in Notice 99–57, these final regulations are being issued in order to prevent inappropriate increases or decreases in the adjusted basis of a corporate partner's interest in a partnership resulting from the partnership's disposition of the corporate partner's stock.

The final regulations set forth a detailed statement of the purpose for these regulations which is consistent with the discussion in Notice 99–57. The final regulations then provide a specific rule implementing this purpose in situations where a corporate partner holds a direct interest in a partnership that owns stock of the corporate partner. This rule applies where a corporation acquires an interest in a partnership that holds stock in that corporation (or the partnership subsequently acquires stock in that corporation in an exchanged basis transaction), the partnership does not have an election under section 754 in effect for the year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the taxable year in which the corporation acquired the interest, a section 754 election had been in effect.

The purpose of these final regulations cannot be avoided through the use of tiered partnerships or other arrangements. For example, the final regulations provide that if a corporation acquires an indirect interest in its own stock through a chain of two or more partnerships (either where the corporation acquires a direct interest in a partnership or where one of the partnerships in the chain acquires an interest in another partnership), and gain or loss from the sale or exchange of the stock is subsequently allocated to the corporation, then the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of the final regulations. As stated above, the final regulations include a statement describing the purpose of these regulations which is intended to guide taxpayers in making basis adjustments in the tiered partnership context. In addition, the final regulations include two examples illustrating the basis adjustments that are required by the final regulations where a corporation acquires an indirect interest in its own stock through a chain of two or more partnerships.

2. The Secretary's Authority

The only comment received in response to the notice of proposed rulemaking discussed the Secretary's authority under section 705 to issue the regulations as proposed. Specifically, the comment suggested that the regulations could be challenged as inconsistent with the plain language of section 705. The comment acknowledged that the proposed regulations are a reasonable interpretation of section 705, but argued that the aggregate treatment of partnerships in the context of section 1032 provides a stronger basis for the Secretary's authority.

Accordingly, the final regulations clarify that the authority for the regulations includes both sections 705 and 1032. As explained in Rev. Rul. 99–57, the use of the aggregate theory of partnerships in the context of section 1032 is necessary to carry out the intent of that section. To reflect this application of the aggregate theory of partnerships and prevent any unintended benefit or detriment to the partners, appropriate adjustments under section 705 must be made to a corporate partner's outside basis. See H.R. Rep. No. 1337, 83d Cong., 2d Sess. 225 (1954); S. Rep. No. 1337, 83d Cong. 2d Sess. 384 (1954). Thus, the regulations provide the mechanical rules necessary to implement Congressional intent under both sections 705 and 1032.

3. Technical Correction Relating to Tiered Partnerships

The comment suggested technical changes to the proposed regulations to prevent taxpayers in tiered partnership situations from inappropriately allocating to the corporate partner a loss resulting from a sale of a lower-tier partnership (LTP) interest that is attributable to gain allocated to and recognized by the noncorporate partners upon the LTP's sale of the corporate partner's stock. The final regulations include modifications to prevent such inappropriate allocations.

4. De Minimis Rule

The comment suggested that an elective *de minimis* rule would be appropriate as a matter of administrative convenience. However, after considering the purpose of these regulations and issues of administrative burden and technical complexity, Treasury and the IRS have determined that a *de minimis* rule is unnecessary.

5. Scope of the Regulations

The comment suggested that the regulations provide guidance with respect to the issues addressed in Rev. Rul. 96–10 (1996–1 C.B. 138) (partners' bases in their partnership interests are increased to reflect gain from the sale of partnership property that is not recognized under sections 267(d) and 707(b)(1)) and Rev. Rul. 96–11 (1996–1 C.B. 140) (a charitable contribution of property by a partnership reduces each partner's basis in the partnership by the partner's share of the partnership's basis in the property contributed). Treasury and the IRS believe that these issues are beyond the scope of these regulations. Accordingly, this comment is not addressed in these regulations.

6. Other Developments

The notice of proposed rulemaking issued elsewhere in this issue of the **Federal Register** addresses remaining issues that Treasury and the IRS considered during the development of the final regulations. Specifically, the proposed regulations apply principles similar to those applied in the final regulations where a corporation's indirect interest in its own stock held through one or more partnerships increases as the result of a distribution of partnership property to another partner and the partnership does not have a section 754 election in effect at the time of the distribution. In addition, the proposed regulations clarify that references in the regulations to stock of a corporate partner include any position in stock of a corporate partner to which section 1032 applies. Certain minor, nonsubstantive changes were made to the final regulations to accommodate the eventual incorporation of the proposed regulations.

Special Analyses

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

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding a citation to read in part as follows:

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

Section 1.705–2 also issued under 26 U.S.C. 705 and 1032. * * *

2. Section 1.705–1 is amended by adding paragraph (a)(7) to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(7) For basis adjustments necessary to coordinate sections 705 and 1032 in certain situations in which a partnership disposes of stock of a corporation that holds a direct or indirect interest in the partnership, see § 1.705–2.

* * * * *

3. Section 1.705–2 is added to read as follows:

§ 1.705–2 Basis adjustments coordinating sections 705 and 1032.

(a) *Purpose.* This section coordinates the application of sections 705 and 1032 and is intended to prevent inappropriate increases or decreases in the adjusted basis of a corporate partner's interest in a partnership resulting from the partnership's disposition of the corporate partner's stock. The rules under section 705 generally are intended to preserve equality between the adjusted basis of a partner's interest in a partnership (outside basis) and such partner's share of the adjusted basis in partnership assets (inside basis). However, in situations where a section 754 election was not in effect for the year in which a partner acquired its interest, the partner's inside basis and outside basis may not be equal. In these situations, gain or loss allocated to the partner upon disposition of the partnership assets that is attributable to the difference between the adjusted basis of the partnership assets absent the section 754 election and the adjusted basis of the partnership assets had a section 754 election been in effect generally will result in an adjustment to the basis of the partner's interest in the partnership under section 705(a). Such gain (or loss) therefore generally will be offset by a corresponding decrease in the gain or increase in the loss (or increase in the gain or decrease in the loss) upon the subsequent disposition by the partner of its interest in the partnership. Where such a difference exists with respect to stock of a corporate partner that is held by the partnership, gain or loss from the disposition of corporate partner stock attributable to the difference is not recognized by the corporate partner under section 1032. To adjust the basis of the corporate partner's interest in the partnership for this unrecognized gain or loss would not be appropriate because it would create an opportunity for the recognition of taxable gain or loss on a subsequent disposition of the partnership interest where no economic gain or loss has been incurred by the corporate partner and no corresponding taxable gain or loss had previously been allocated to the corporate partner by the partnership.

(b) *Single partnership*—(1) *Required adjustments relating to acquisitions of partnership interest.* (i) This paragraph (b)(1) applies in situations where a corporation acquires an interest in a partnership that holds stock in that corporation (or the partnership subsequently acquires stock in that corporation in an exchanged basis transaction), the partnership does not have an election under section 754 in effect for the year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the year in which

the corporation acquired the interest, a section 754 election had been in effect.

(ii) The provisions of this paragraph (b)(1) are illustrated by the following example:

Example. (i) A, B, and C form equal partnership PRS. Each partner contributes $30,000 in exchange for its partnership interest. PRS has no liabilities. PRS purchases stock in corporation X for $30,000, which appreciates in value to $120,000. PRS also purchases inventory for $60,000, which appreciates in value to $150,000. A sells its interest in PRS to corporation X for $90,000 in a year for which an election under section 754 is not in effect. PRS later sells the X stock for $150,000. PRS realizes a gain of $120,000 on the sale of the X stock. X's share of the gain is $40,000. Under section 1032, X does not recognize its share of the gain.

(ii) Normally, X would be entitled to a $40,000 increase in the basis of its PRS interest for its allocable share of PRS's gain from the sale of the X stock, but a special rule applies in this situation. If a section 754 election had been in effect for the year in which X acquired its interest in PRS, X would have been entitled to a basis adjustment under section 743(b) of $60,000 (the excess of X's basis for the transferred partnership interest over X's share of the adjusted basis to PRS of PRS's property). See § 1.743–1(b). Under § 1.755–1(b), the basis adjustment under section 743(b) would have been allocated $30,000 to the X stock (the amount of the gain that would have been allocated to X from the hypothetical sale of the stock), and $30,000 to the inventory (the amount of the gain that would have been allocated to X from the hypothetical sale of the inventory).

(iii) If a section 754 election had been in effect for the year in which X acquired its interest in PRS, the amount of gain that X would have recognized upon PRS's disposition of X stock (absent the application of section 1032) would be $10,000 (X's share of PRS's gain from the stock sale, $40,000, minus the amount of X's basis adjustment under section 743(b), $30,000). See § 1.743–1(j). Accordingly, the increase in the basis of X's interest in PRS is $10,000.

(2) [Reserved]

(c) *Tiered partnerships and other arrangements*—(1) *Required adjustments.* The purpose of these regulations as set forth in paragraph (a) of this section cannot be avoided through the use of tiered partnerships or other arrangements. For example, if a corporation acquires an indirect interest in its own stock through a chain of two or more partnerships (either where the corporation acquires a direct interest in a partnership or where one of the partnerships in the chain acquires an interest in another partnership), and gain or loss from the sale or exchange of the stock is subsequently allocated to the corporation, then the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of this section.

(2) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. Acquisition of upper-tier partnership interest by corporation. (i) A, B, and C form a partnership (UTP), with each partner contributing $25,000. UTP and D form a partnership (LTP). UTP contributes $75,000 in exchange for its interest in LTP, and D contributes $25,000 in exchange for D's interest in LTP. Neither UTP nor LTP has any liabilities. LTP purchases stock in corporation E for $100,000, which appreciates in value to $1,000,000. C sells its interest in UTP to corporation E for $250,000 in a year for which an election under section 754 is not in effect for UTP or LTP. LTP later sells the E stock for $2,000,000. LTP realizes a $1,900,000 gain on the sale of the E stock. UTP's share of the gain is $1,425,000, and E's share of the gain is $475,000. Under section 1032, E does not recognize its share of the gain.

(ii) With respect to the basis of UTP's interest in LTP, if all of the gain from the sale of the E stock (including E's share) were to increase the basis of UTP's interest in LTP, UTP's basis in such interest would be $1,500,000 ($75,000 + $1,425,000). The fair market value of UTP's interest in LTP is $1,500,000. Because UTP did not have a section 754 election in effect for the taxable year in which E acquired its interest in UTP, UTP's basis in the LTP interest does not reflect the purchase price paid by E for its interest. Increasing the basis of UTP's interest in LTP by the full amount of the gain that would be recognized (in the absence of section 1032) on the sale of the E stock preserves the conformity between UTP's inside basis and outside basis with respect to LTP (i.e., UTP's share of LTP's cash is equal to $1,500,000, and UTP's basis in the LTP interest is $1,500,000) and appropriately would cause UTP to recognize no gain or loss on the sale of UTP's interest in LTP immediately after the sale of the E stock. Accordingly, increasing the basis of UTP's interest in LTP by the entire amount of gain allocated to UTP (including E's share) from LTP's sale of the E stock is consistent with the purpose of this section. The $1,425,000 of gain allocated by LTP to UTP will increase the adjusted basis of UTP's interest in LTP under section 705(a)(1). The basis of UTP's interest in LTP immediately after the sale of the E stock is $1,500,000.

(iii) With respect to the basis of E's interest in UTP, if E's share of the gain allocated to UTP and then to E were to increase the basis of E's interest in UTP, E's basis in such interest would be $725,000 ($250,000 + $475,000) and the fair market value of such interest would be $500,000, so that E would recognize a loss of $225,000 if E sold its interest in UTP immediately after LTP's disposition of the E stock. It would be inappropriate for E to recognize a taxable loss of $225,000 upon a disposition of its interest in UTP because E would not incur an economic loss in the transaction, and E did not recognize a taxable gain upon LTP's disposition of the E stock that appropriately would be offset by a taxable loss on the disposition of its interest in UTP. Accordingly, increasing E's basis in its UTP interest by the entire amount of gain allocated to E from the sale of the E stock is not consistent with the purpose of this section. (Conversely, because A and B were allocated taxable gain on the disposition of the E stock, it would be appropriate to increase A's and B's bases in their respective interests in UTP by the full amount of the gain allocated to them.)

(iv) The appropriate basis adjustment for E's interest in UTP upon the disposition of the E stock by LTP can be determined as the amount of gain that E would have recognized (in the absence of section 1032) upon the sale by LTP of the E stock if both UTP and LTP had made section 754 elections for the taxable year in which E acquired the interest in UTP. If section 754 elections had been in effect for UTP and LTP for the year in which E acquired E's interest in UTP, the following would occur. E would be entitled to a $225,000 positive basis adjustment under section 743(b) with respect to the property of UTP. The entire basis adjustment would be allocated to UTP's only asset, its interest in LTP. In addition, the sale of C's interest in UTP would be treated as a deemed sale of E's share of UTP's interest in LTP for purposes of sections 754 and 743. The deemed selling price of E's share of UTP's interest in LTP would be $250,000 (E's share of UTP's adjusted basis in LTP, $25,000, plus E's basis adjustment under section 743(b) with respect to the assets of UTP, $225,000). The deemed sale of E's share of UTP's interest in LTP would trigger a basis adjustment under section 743(b) of $225,000 with respect to the assets of LTP (the excess of E's share of UTP's adjusted basis in LTP, including E's basis adjustment ($225,000), $250,000, over E's share of the adjusted basis of LTP's property, $25,000). This $225,000 adjustment by LTP would be allocated to LTP's only asset, the E stock, and would be segregated and allocated solely to E. The amount of LTP's gain from the sale of the E stock (before considering section 743(b)) would be $1,900,000. E's share of this gain, $475,000, would be offset in part by the $225,000 basis adjustment under section 743(b), so that E would recognize gain equal to $250,000 in the absence of section 1032.

(v) If the basis of E's interest in UTP were increased by $250,000, the total basis of E's interest would equal $500,000. This would conform to E's share of UTP's basis in the LTP interest ($1,500,000 × 1/3 = $500,000) as well as E's indirect share of the cash held by LTP ((1/3 × 3/4) × $2,000,000 = $500,000). Such a basis adjustment does not create the opportunity for the recognition of an inappropriate loss by E on a subsequent disposition of E's interest in UTP and is consistent with the purpose of this section. Accordingly, under this paragraph (c), of the $475,000 gain allocated to E, only $250,000 will apply to increase the adjusted basis of E in UTP under section 705(a)(1). E's adjusted basis in its UTP interest following the sale of the E stock is $500,000.

Example 2. Acquisition of lower-tier partnership interest by upper-tier partnership. (i) A, corporation B, and C form

an equal partnership (UTP), with each partner contributing $100,000. D, E, and F also form an equal partnership (LTP), with each partner contributing $30,000. LTP purchases stock in corporation B for $90,000, which appreciates in value to $900,000. LTP has no liabilities. UTP purchases D's interest in LTP for $300,000. LTP does not have an election under section 754 in effect for the taxable year of UTP's purchase. LTP later sells the B stock for $900,000. UTP's share of the gain is $270,000, and B's share of that gain is $90,000. Under section 1032, B does not recognize its share of the gain.

(ii) With respect to the basis of UTP's interest in LTP, if all of the gain from the sale of the B stock (including B's share) were to increase the basis of UTP's interest in LTP, UTP's basis in the LTP interest would be $570,000 ($300,000 + $270,000), and the fair market value of such interest would be $300,000, so that B would be allocated a loss of $90,000 (($570,000—$300,000) × 1/3) if UTP sold its interest in LTP immediately after LTP's disposition of the B stock. It would be inappropriate for B to recognize a taxable loss of $90,000 upon a disposition of UTP's interest in LTP. B would not incur an economic loss in the transaction, and B was not allocated a taxable gain upon LTP's disposition of the B stock that appropriately would be offset by a taxable loss on the disposition of UTP's interest in LTP. Accordingly, increasing UTP's basis in its LTP interest by the gain allocated to B from the sale of the B stock is not consistent with the purpose of this section. (Conversely, because E and F were allocated taxable gain on the disposition of the B stock, it would be appropriate to increase E's and F's bases in their respective interests in LTP by the full amount of such gain.)

(iii) The appropriate basis adjustment for UTP's interest in LTP upon the disposition of the B stock by LTP can be determined as the amount of gain that UTP would have recognized (in the absence of section 1032) upon the sale by LTP of the B stock if the portion of the gain allocated to UTP that subsequently is allocated to B were determined as if LTP had made an election under section 754 for the taxable year in which UTP acquired its interest in LTP. If a section 754 election had been in effect for LTP for the year in which UTP acquired its interest in LTP, then with respect to B, the following would occur. UTP would be entitled to a $90,000 positive basis adjustment under section 743(b), allocable to B, in the property of LTP. The entire basis adjustment would be allocated to LTP's only asset, its B stock. The amount of LTP's gain from the sale of the B stock (before considering section 743(b)) would be $810,000. UTP's share of this gain, $270,000, would be offset, in part, by the basis adjustment under section 743(b), so that UTP would recognize gain equal to $180,000.

(iv) If the basis of UTP's interest in LTP were increased by $180,000, the total basis of UTP's partnership interest would equal $480,000. This would conform to the sum of UTP's share of the cash held by LTP ((1/3 × $900,000 = $300,000) and the taxable gain recognized by A and C on the disposition of the B stock that appropriately may be offset on the disposition of their interests in UTP ($90,000 + $90,000 = $180,000). Such a basis adjustment does not inappropriately create the opportunity for the allocation of a loss to B on a subsequent disposition of UTP's interest in LTP and is consistent with the purpose of this section. Accordingly, of the $270,000 gain allocated to UTP, only $180,000 will apply to increase the adjusted basis of UTP in LTP under section 705(a)(1). Such $180,000 basis increase must be segregated and allocated $90,000 each to solely A and C. UTP's adjusted basis in its LTP interest following the sale of the B stock is $480,000.

(v) With respect to B's interest in UTP, if B's share of the gain allocated to UTP and then to B were to increase the basis of B's interest in UTP, B would have a UTP partnership interest with an adjusted basis of $190,000 ($100,000 + $90,000) and a value of $100,000, so that B would recognize a loss of $90,000 if B sold its interest in UTP immediately after LTP's disposition of the B stock. It would be inappropriate for B to recognize a taxable loss of $90,000 upon a disposition of its interest in UTP because B would not incur an economic loss in the transaction, and B did not recognize a taxable gain upon LTP's disposition of the B stock that appropriately would be offset by a taxable loss on the disposition of its interest in UTP. Accordingly, increasing B's basis in its UTP interest by the gain allocated to B from the sale of the B stock is not consistent with the purpose of this section. (Conversely, because A and C were allocated taxable gain on the disposition of the B stock that is a result of LTP not having a section 754 election in effect, it would be appropriate for A and C to recognize an offsetting taxable loss on the disposition of A's and C's interests in UTP. Accordingly, it would be appropriate to increase A's and C's bases in their respective interests in UTP by the amount of gain recognized by A and C.)

(vi) The appropriate basis adjustment for B's interest in UTP upon the disposition of the B stock by LTP can be determined as the amount of gain that B would have recognized (in the absence of section 1032) upon the sale by LTP of the B stock if the portion of the gain allocated to UTP that is subsequently allocated to B were determined as if LTP had made an election under section 754 for the taxable year in which UTP acquired its interest in LTP. If a section 754 election had been in effect for LTP for the year in which UTP acquired its interest in LTP, then with respect to B, the following would occur. UTP would be entitled to a basis adjustment under section 743(b) in the property of LTP of $90,000 with respect to B. The entire basis adjustment would be allocated to LTP's only asset, its B stock. The amount of LTP's gain from the sale of the B stock (before considering section 743(b)) would be $810,000. UTP's share of this gain, $270,000, would be offset, in part, by the $90,000 basis adjustment under section 743(b), so that UTP would recognize gain equal to $180,000. The $90,000 basis adjustment would completely offset the gain that otherwise would be allocated to B.

(vii) If no gain were allocated to B so that the basis of B's interest in UTP was not increased, the total basis of B's interest would equal $100,000. This would conform to B's share of UTP's basis in the LTP interest (($480,000—$180,000 (i.e., A's and C's share of the basis that should offset taxable gain recognized as a result of LTP's failure to have a section 754 election)) × 1/3 = $100,000) as well as B's indirect share of the cash held by LTP ((1/3 × 1/3) × $900,000 = $100,000). Such a basis adjustment does not create the opportunity for the recognition of an inappropriate loss by B on a subsequent disposition of B's interest in UTP and is consistent with the purpose of this section. Accordingly, under this paragraph (c), of the $90,000 gain allocated to B, none will apply to increase the adjusted basis of B in UTP under section 705(a)(1). B's adjusted basis in its UTP interest following the sale of the B stock is $100,000.

(viii) Immediately after LTP's disposition of the B stock, UTP sells its interest in LTP for $300,000. UTP's adjusted basis in its LTP interest is $480,000, $180,000 of which must be allocated $90,000 each to A and C. Accordingly, upon UTP's sale of its interest in LTP, UTP realizes $180,000 of loss, and A and C in turn each realize $90,000 of loss.

(d) [Reserved]

(e) *Effective date.* This section applies to gain or loss allocated with respect to sales or exchanges of stock occurring after December 6, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: March 14, 2002.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–7649 Filed 3–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–02–001]

RIN 2115–AE46

Special Local Regulations; San Diego Crew Classic

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This Notice announces the implementation of the regulations located at 33 CFR 100.1101 for the San Diego Crew Classic on April 6–7, 2002. These regulations will be effective on Mission Bay and are necessary to control vessel traffic in the regulated areas during the event to ensure the safety of participants and spectators.

EFFECTIVE DATES: This section is effective from 6:00 a.m. on April 6, 2002 until 6:00 p.m. on April 7, 2002.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, U. S. Coast

Guard Marine Safety Office San Diego, San Diego, California; Telephone: (619) 683–6495.

SUPPLEMENTARY INFORMATION: *Discussion of Notice.* These Special Local Regulations permit Coast Guard control of vessel traffic in order to ensure the safety of spectator and participant vessels. In accordance with the regulations in 33 CFR 100.1101, no persons or vessels shall block, anchor, or loiter in the regulated area; nor shall any person or vessel transit through the regulated area, or otherwise impede the transit of participant or official patrol vessels in the regulated area, unless cleared for such entry by or through an official patrol vessel acting on behalf of the Patrol Commander. The regulated area is located on Mission Bay in that portion bounded by Enchanted Cove, Fiesta Island, Pacific Passage, and DeANza Point. Pursuant to 33 CFR 100.1101(b)(3), Commanding Officer, Coast Guard Activities San Diego is designated the Patrol Commander for this event. He has authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard.

Good Cause Statement. Good cause exists for publishing this Notice of Implementation less than 30 days before the event because there is an immediate need to protect the crew boat racers from any motorized boats in the vicinity. This need was balanced against the principle that all affected persons should be afforded a reasonable time to prepare for the effective date of the rule. Because general notice of this rule is published in the Code of Federal Regulations and the general notice is being followed by this Notice of Implementation, affected persons will have received adequate notice that this rule would come into effect.

Dated: March 19, 2002.

D.C. Folsom,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 02–7712 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–036]

Drawbridge Operation Regulations: New Rochelle Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Glen Island Bridge, mile 0.8, across New Rochelle Harbor at New Rochelle, New York. This temporary deviation will allow the bridge to remain closed to navigation from 11 p.m. to 7 a.m., Sunday through Friday, from April 29, 2002 through June 26, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from April 29, 2002 through June 26, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The bridge owner, Westchester County Department of Public Works, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, replacement of deteriorated concrete and structural supports, at the bridge. The performance of these repairs require the bridge to remain in the closed position.

The Coast Guard and the owner of the bridge coordinated this closure with the mariners that normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system. Therefore, as a result of that coordination effort, a temporary deviation from the drawbridge operation regulations has been approved. Under this temporary deviation the Glen Island Bridge will not open for vessel traffic from 11 p.m. to 7 a.m., Sunday through Friday, from April 29, 2002 through June 26, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 21, 2002.

G.N. Naccara,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–7571 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 02–006]

RIN 2115–AA97

Security Zone; Waters Adjacent to Diablo Canyon Nuclear Power Plant, Avila Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard has established a security zone in the waters adjacent to Diablo Canyon Nuclear Power Plant near Avila Beach, California. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the power plant and individuals near or in the power plant facilities and the surrounding communities. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

DATES: This interim rule is effective at 3:59 p.m. (PDT) on March 29, 2002. Comments and related material must reach the Coast Guard on or before May 28, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, Waterways Management Division, 1001 S. Seaside Avenue, Building 20, San Pedro, California, 90731. The Waterways Management Division maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Division between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Los Angeles-Long Beach 02–006), indicate the specific section of this document to

which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them. In our final rule, we will include a concise general statement of the comments received and identify any changes from the rule based on the comments.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Division at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the terrorist attacks on September 11, 2001 and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established around Diablo Canyon Nuclear Power Plant. This security zone is needed to protect the United States and more specifically the people, waterways, and properties near Diablo Canyon. A Temporary Final Rule (TFR) has been in effect protecting this area since 4:00 p.m. (PDT) on September 28, 2001 and will be expiring 3:59 p.m. (PDT) on March 29, 2002. In order for the enforcement of the security zone to continue without interruption, an interim rule with request for comments will be used instead of the notice of proposed rulemaking procedure. The delay inherent in the NPRM process, and any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to Diablo Canyon Nuclear Power Plant vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by the rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to Diablo Canyon Nuclear Power Plant. Immediate action is required to accomplish these objectives and necessary to continue safeguarding the Diablo Canyon Nuclear Power Plant and its surrounding areas.

For the reasons stated in the paragraph above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on commercial and public structures—the World Trade Center in New York and the Pentagon in Arlington, Virginia—killing large numbers of people and damaging properties of national significance. There is an increased risk that further subversive or terrorist activity may be launched against the United States based on warnings given by national security and intelligence officials. The Federal Bureau of Investigation (FBI) has issued warnings on October 11, 2001 and February 11, 2002 concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan have made it prudent for important U.S. facilities to be on a higher state of alert because Osama Bin Ladin and his Al Qaeda organization, and other similar organizations, have publicly declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a nuclear power plant would have on the surrounding area and communities, security zones are prudent for navigable waterways adjacent to these nuclear power plants. To mitigate the risk of terrorist actions against important U.S. infrastructure, the Coast Guard has increased safety and security measures on the waterfronts of nuclear power plants by establishing security zones to aid in the waterside protection of these facilities. Vessels operating near the Diablo Canyon Nuclear Power Plant present possible platforms from which individuals may gain unauthorized access to the power plant facilities or launch terrorist attacks upon the waterfront structures and adjacent population centers. As a result, the Coast Guard is taking measures to prevent vessels or persons from accessing the navigable waters close to the Diablo Canyon Nuclear Power Plant.

This regulation establishes a security zone in the waters of the Pacific Ocean within a 2,000 yard (approximately one nautical mile) radius of Diablo Canyon Nuclear Power Plant centered at position 35°12′23″ N, 120°51′23″ W. These coordinates are based upon the North American Datum of 1983 (NAD 83). Diablo Canyon Nuclear Power Plant is located adjacent to the Pacific Ocean along California's Central Coast near Avila Beach in San Luis Obispo County. Extensive land-based security measures are already in place to protect Diablo Canyon Nuclear Power Plant from sabotage. Establishing a security zone in the waters adjacent to the power plant will aid in the waterside protection of the facility.

This rulemaking will make permanent the temporary security zone established on October 2, 2001, which was published in the **Federal Register** (66 FR 53713, Oct. 24, 2001) under temporary section 165.T11–055(a)(3) of Title 33 of the Code of Federal Regulations (CFR). In that rulemaking, the Coast Guard established a security zone encompassing the waters within a one nautical mile radius of Diablo Canyon Nuclear Power Plant, which is essentially the same security zone that we are now establishing permanently.

Discussion of Interim Rule

The Coast Guard has established a security zone on the waters within a 2,000 yard radius of Diablo Canyon Nuclear Power Plant centered at position 35°12′23″ N, 120°51′23″ W. [Datum: NAD 83]. This security zone is needed for national security reasons to protect the power plant, the public, transiting vessels, and adjacent waterside facilities from potential subversive acts, accidents, or other events of a similar nature. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. In addition to the authority of section 12 of the PWSA (33 U.S.C. 1231), the authority for this rule includes section 7 of the PWSA (33 U.S.C. 1226).

Vessels or persons violating this section will be subject to the penalties set forth in section 13 of the PWSA (33 U.S.C. 1232). Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties

(imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the patrol and enforcement of this security zone.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The size of the zone encompasses a small portion of the Pacific Ocean located along a jagged and rocky coastline. Due to the naturally hazardous nature of the coastline, we expect most vessels to remain well clear and transit around this zone for safety of navigation reasons. In addition, vessels may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect this rule will affect the following entities, some of which may be small entities: the owners and operators of private and commercial vessels intending to transit or anchor in the Pacific Ocean near Avila Beach, California. The impact to these entities would not, however, be significant since this zone encompasses a small portion of the ocean located along a jagged and rocky portion of the coastline. In addition, vessels may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732–2020.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because it establishes a security zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1155 to read as follows:

§ 165.1155 Security Zone; Diablo Canyon Nuclear Power Plant, Avila Beach, California.

(a) *Location.* The following area is a security zone:

All waters of the Pacific Ocean, from surface to bottom, within a 2,000 yard radius of Diablo Canyon Nuclear Power Plant centered at position 35°12′23″ N, 120°51′23″ W. [Datum: NAD 83].

(b) *Regulations.*

(1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–8724 or on VHF–FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: March 22, 2002.

J.M. Holmes,

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

[FR Doc. 02–7713 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301227; FRL–6829–8]

RIN 2070–AB78

Foramsulfuron; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of foramsulfuron on corn when applied/used as a herbicide. Aventis CropScience USA LP submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting tolerances for foramsulfuron on corn commodities. After review of the data submitted in support to the petition for tolerances, EPA determined that the toxicological profile of foramsulfuron supports a tolerance exemption for this chemical as no adverse effects were observed in the submitted toxicological studies regardless of the route of exposure. This regulation eliminates the need to establish a maximum permissible level for residues of foramsulfuron.

DATES: This regulation is effective March 29, 2002. Objections and requests for hearings, identified by docket control number OPP–301227, must be received on or before May 28, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301227 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.gpo.gov/opptsfrs/home/guidelin.htm

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301227. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of February 7, 2001 (66 FR 9319–9323) (FRL–6765–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 0F6161) by Aventis CropScience USA LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by the petitioner Aventis CropScience USA LP. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of foramsulfuron on corn grain, corn forage, and corn stover. After review of the data submitted in support of the petition for tolerances, EPA determined that the toxicological profile of foramsulfuron supports a tolerance exemption for this chemical as no adverse effects were observed in the submitted toxicological studies regardless of the route of exposure.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by foramsulfuron are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL). There was no lowest observed adverse effect level (LOAEL) in any of the subchronic or chronic toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.1100	Acute Oral	LD_{50}>5,000 mg/kg
870.1200	Acute Dermal	LD_{50}>2,000 mg/kg
870.1300	Acute Inhalation	LC_{50}>5.04 mg/L
870.2400	Primary Eye Irritation	Mild eye irritant
870.2500	Primary Skin Irritation	Not a dermal irritant
870.2600	Dermal Sensitization	Not a dermal sensitizer
870.3100	90–Day oral toxicity rodents	NOAEL = 1,002 mg/kg/day, Highest Dose Tested (HDT)
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 1,000 mg/kg/day, HDT
870.3200	21/28–Day dermal toxicity	NOAEL = 1,000 mg/kg/day, HDT
870.3700	Prenatal developmental in rodents	Maternal and Developmental NOAEL = 1,000 mg/kg/day, HDT
870.3700	Prenatal developmental in nonrodents	Maternal and Developmental NOAEL = 500 mg/kg/day, HDT

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects	Parental/Systemic, Reproductive and Offspring NOAEL = 1,082 mg/kg/day, HDT
870.4100/870.4200	Chronic toxicity and Carcinogenicity rodents	NOAEL = 849 mg/kg/day, HDT No evidence of carcinogenicity
870.4100	Chronic toxicity dogs	NOAEL = 1,000 mg/kg/day, HDT
870.4300	Carcinogenicity mice	NOAEL = 1,115 mg/kg/day, HDT No evidence of carcinogenicity
870.5100	Gene Mutation	Negative
870.5375	Cytogenetics	Negative
870.5385	Other Effects	Negative
870.7485	Metabolism and pharmacokinetics	Primarily excreted in feces as parent compound within 3 days of oral dosing.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Due to low toxicity, it was determined that a dietary risk assessment of foramsulfuron in food is not needed and, therefore, none was conducted.

1. *Food*—i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Since the acute toxicity is low (toxicity categories III and IV) for all tests conducted, the occurrence of an effect of concern as a result of a one day or single exposure is highly unlikely, and, therefore, an acute dietary risk assessment was not conducted.

ii. *Chronic exposure*. There were no observed adverse effects at the highest dose tested (500 mg/kg/day or higher) in any of the subchronic or chronic toxicity tests conducted. The August 1998 OPPTS Series 870 Harmonized Test Guidelines for health effects recommend for subchronic and chronic testing the highest dose tested should not exceed 1,000 mg/kg/day using the procedures described for these studies, unless potential human exposure data indicate the need for higher doses. A dose of 1,000 mg/kg/day is equivalent to a diet in which the pesticide comprises approximately 7% of dietary consumption. Similarly, the lowest high dose tested in the studies, 500 mg/kg/day, is equivalent to a diet in which the pesticide comprises approximately 3.5% of the dietary consumption. In normal food consumption, humans would be exposed to much less foramsulfuron than 3.5% of the dietary consumption. Therefore, it was determined that a chronic dietary risk assessment of foramsulfuron in food is not needed and, therefore, none was conducted.

2. *Drinking water exposure*. The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Drinking water screening concentrations for humans potentially exposed to total residues of foramsulfuron and structurally similar transformation products in surface water were estimated by using the standard, linked PRZM (version 3.12)/EXAMS (version 2.97.5) tier 2 models that the Environmental Fate and Effects Division (EFED) has adapted for an index reservoir. The EFED SCI-GROW2 tier 1 regression model (version 2.1; May 1, 2001) was used for estimating exposure from groundwater. These routinely used models and their descriptions are at the following EPA internet site: http://www.epa.gov/oppefed1/models/water. Results are tabulated and shown in the following discussion. The effect of including structurally similar transformation products and the effect of different time intervals between applications are evaluated in the following discussion.

Based on the PRZM/EXAMS and SCI-GROW models, at the use rate of 0.0365 lb a.i./acre, the estimated environmental concentrations (EECs) of foramsulfuron for acute exposures are estimated to be 1.0 parts per billion (ppb) for surface water and 0.05 ppb for ground water. The EECs for chronic exposures are estimated to be 0.3 ppb for surface water and 0.05 ppb for ground water. These concentrations were compared to the lowest high dose tested in the toxicity studies (500 mg/kg/day) divided by an uncertainty factor of 100, i.e. 5 mg/kg/

day. Using infants as a worst case (1 L water per day, 10 kg body weight), chronic exposure from surface water (EEC = 0.3 ppb) would be 3×10^{-5} mg/kg/day, which represents 6×10^{-4} percent of the 5 mg/kg/day. For acute exposure in surface water, a similar calculation using the 1.0 ppb EEC gives an exposure of 1×10^{-4} mg/kg/day, or 0.002% of the 5 mg/kg/day. For chronic and acute exposure in ground water, the EEC of 0.05 ppb gives an exposure that is 0.0001% of the 5 mg/kg/day. Because the concentrations of foramsulfuron in drinking water result in exposure much less than 5 mg/kg/day, the contribution of consumption of foramsulfuron via drinking water to total dietary consumption of foramsulfuron (food plus water) is not significant.

B. Other Non-Occupational Exposure

The term residential exposure is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Foramsulfuron is not registered or proposed for use on any sites that would result in residential exposure.

V. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity.

EPA does not have, at this time, available data to determine whether foramsulfuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, foramsulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that foramsulfuron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

VI. Determination of Safety for U.S. Population, Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. Since a dietary risk assessment was not conducted for foramsulfuron due to its low toxicity, a safety factor for infants and children is not applicable to the determination of the risk due to exposure of infants and children to foramsulfuron.

2. *Prenatal and postnatal sensitivity*. No significant toxicity or prenatal or postnatal toxicity was seen in any of the studies conducted with foramsulfuron.

3. *Conclusion*. There is a complete toxicity data base for foramsulfuron. Since a dietary risk assessment was not conducted for foramsulfuron due to its low toxicity, a safety factor for infants and children is not applicable to the determination of the risk due to exposure of infants and children to foramsulfuron. Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues. Accordingly, EPA finds that exempting from the requirement of a tolerance will be safe.

VII. Other Considerations

A. Endocrine Disruptors

No special studies have been conducted to investigate the potential of foramsulfuron to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in any of the standard toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

B. Analytical Method(s)

This action is establishing an exemption from the requirement of a tolerance for the reasons described above. For this reason, no analytical method for enforcement purposes is required.

C. Existing Tolerances

There are no existing tolerances for foramsulfuron.

D. International Tolerances

There are no established or proposed Codex Maximum Residue Limits (MRLs) for foramsulfuron.

VIII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301227 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 28, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice.

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

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

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

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

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301227, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IX. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled*Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct

effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: March 15, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1219 is added to subpart D to read as follows:

§ 180.1219 Foramsulfuron; exemption from the requirement of a tolerance.

The pesticide foramsulfuron is exempted from the requirement of a tolerance in corn grain, corn forage, and corn stover when applied as a herbicide in accordance with good agricultural practices.

[FR Doc. 02–7502 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–247; MM Docket No. 01–121, RM–10125]

Radio Broadcasting Services; Manning, Moncks Corner, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission grants a petition for rule making filed by Cumulus Licensing Corp., succeeded by Apex Communications, licensee of Station WHLZ (FM), Manning, South Carolina and reallots Channel 223C from Manning to Moncks Corner, South Carolina, and modifies the license of Station WHLZ to reflect the change of community. Channel 223C can be allotted at Station WHLZ (FM)'s existing site 37.7 kilometers (23.4 miles) north of the community. Coordinates for Channel 223C at Moncks Corner are 33–32–05 NL and 79–59–15 WL.

DATES: Effective March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–121, adopted January 23, 2002 and released February 1, 2002. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCASTING SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Manning, Channel 223C and Channel 233C at Moncks Corner, and adding Channel 223C at Moncks Corner.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7565 Filed 3–28–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–2002–6189]

RIN 9991–AA24

Organization and Delegation of the Powers and Duties to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation delegates to the Commandant, United States Coast Guard, the authority contained in Section 5001(c)(1)(B) of the Oil Pollution Act of 1990 (OPA 90).

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael Pittman (G–MOR–1), (202) 267–6921, United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593.

SUPPLEMENTARY INFORMATION: This rule amends 49 CFR 1.46, by adding a new paragraph (uuu) to reflect the delegation of the Secretary's authority under Section 5001(c)(1)(B) of the Oil Pollution Act of 1990 (OPA 90), (33 U.S.C. 2731). This will allow the Commandant, United States Coast Guard to appoint representatives to the Advisory Board of the Prince William Sound Spill Recovery Institute as specified in the above law. This rule is published as a final rule and is effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, The Secretary, for good cause, finds, under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3), that notice, and the opportunity for public comment before the rule are unnecessary and that the rule should be made effective in less than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.46 is amended by adding the following paragraph (uuu) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(uuu) Carry out the functions and responsibilities and exercise the authorities vested in the Secretary by Section 5001(c)(1)(B) of the Oil Pollution Act of 1990 (OPA 90), 33 U.S.C. 2731, pertaining to appointment authority for a representative to the Advisory Board of the Prince William Sound Spill Recovery Institute.

Issued at Washington, DC this 22nd day of March, 2002.

Norman Mineta,

Secretary of Transportation.

[FR Doc. 02–7714 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 032502E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 26, 2002, until 1200 hrs, A.l.t., August 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 mt. For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest at the beginning of the next season(s) shall be subtracted from or added to the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does not exceed 15,187 mt in any single season. The B season allowance of the pollock TAC in Statistical Area 620 of the GOA is 8,618 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002). The Regional Administrator hereby increases the B season pollock TAC by 2,291 mt. This amount is the portion of the A season pollock under harvest in Statistical Area 620 which provides for an aggregate B season allowance in the Central and Western Regulatory Areas that does not exceed 15,187 mt. In accordance with § 679.20(a)(5)(ii)(C), the B season allowance of pollock TAC in Statistical Area 620 is 10,909 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the pollock TAC in Statistical Area 620 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,809 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 B season pollock TAC specified for Statistical Area 620 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 B season pollock TAC specified for Statistical Area 620 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 25, 2002.

John H. Dunnigan,

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

[FR Doc. 02–7646 Filed 3–26–02; 3:19 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 61
Friday, March 29, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

RAILROAD RETIREMENT BOARD

20 CFR Parts 260 and 320

RIN 3220–AB03

Requests for Reconsideration and Appeals Within the Board

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to simplify the procedures with respect to requests for reconsideration and appeals within the Board. These amendments clarify the appeals procedures and make the regulations more readable and understandable to the public.

DATES: Comments shall be submitted on or before May 28, 2002.

ADDRESSES: Address any comments concerning this proposed rule to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 260 of the Board's regulations deals generally with administrative review of denials of claims or requests for waiver of overpayments under the Railroad Retirement Act (RRA). Part 320 deals with the same matters under the Railroad Unemployment Insurance Act (RUIA). The Board believes this process can be streamlined without diminishing the rights of claimants in the administrative review process. In addition, the Board believes that part 260 can be made more readable and thus more understandable to the public.

Specifically, the Board proposes to amend § 260.2 to clarify that the procedure applicable to the appeal of a decision denying the crediting of compensation also applies to the crediting of service months under the RRA. Sections 260.3(d) and 320.10(e) are amended to add as possible good cause for failure to file a timely reconsideration request or appeal within the agency that the claimant believed his or her representative had filed such a request or appeal. In order to protect an appellant where he or she may have a problem obtaining appeal forms, §§ 260.5(b), 260.9(b), 320.12, and 320.39 are amended to provide that the right to appeal is protected by the submission of a written request received within the appeal period stating an intent to appeal, if the claimant files the appeal form within the 30-day period following the date of the letter sending the form to the claimant.

A request for waiver of an overpayment must be filed within 60 days of the notice of overpayment. Sections 260.4(c) and 320.11(f) provide that the Board will still consider a request for waiver filed after the 60-day time period, but may proceed to collect the overpayment and that any amounts collected prior to the request for waiver will not be waived.

The amendments amend both parts 260 and 320 to delay recovery of an erroneous payment when a timely appeal is filed with the Bureau of Hearings and Appeals (new paragraphs 260.5(d) and 320.12(c)) and also when a timely appeal is filed with the three-member Board (new paragraphs 260.9(d) and 320.39(b)).

Sections 260.9(d) and (e) clarify that new evidence will ordinarily not be accepted on appeal to the three-member Board from a decision of a hearings officer, but that argument will be accepted. A new § 320.40(d) parallels § 260.9(e). Sections 260.10 and 320.49 provide that the date of postmark shall be considered the date of filing a document with the Board. Finally, a number of nomenclature changes are made to reflect a recent reorganization.

Sections 260.10 and 320.49 are revised to state that as a general rule a document is filed on the day it is received by the Board but that the date of a postmark or other evidence of the date of mailing may be used to establish a filing date. The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required. Information collections associated with this rule have been approved by the Office of Management and Budget under control number 3220–0007.

List of Subjects

20 CFR Part 260

Administrative practice and procedure, Railroad retirement, Reporting and record keeping requirements.

20 CFR Part 320

Administrative practice and procedure, Claims, Railroad unemployment insurance, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II, parts 260 and 320 of the Code of Federal Regulations as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF DISABILITY AND MEDICARE OPERATIONS, BUREAU OF RETIREMENT BENEFITS, BUREAU OF SURVIVOR BENEFITS, OFFICE OF RETIREMENT AND SURVIVOR PROGRAMS, AND THE BUREAU OF RESEARCH AND EMPLOYMENT ACCOUNTS

1. The authority citation for part 260 continues to read as follows:

Authority: 45 U.S.C. 231f; 45 U.S.C. 231g; 45 U.S.C. 355.

2. The heading of part 260 is revised to read as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD

3. The heading of § 260.1, and introductory paragraph (a) of this section are revised to read as follows:

§ 260.1 Initial decisions.

(a) *General.* Claims for benefits shall be adjudicated and initial decisions made by the Board concerning:

* * * * *

4. In §§ 260.1(b), 260.1(d)(1), and (d)(2), remove the words ''Director of the appropriate bureau or office'' and ''appropriate bureau or office'' wherever they appear, and add in their place the word ''Board'.

5. The heading and § 260.2 are revised to read as follows:

§ 260.2 Initial decisions on the amount of service and compensation credited to an employee.

Within 30 days after receipt of a timely request by an employee for amendment with respect to the number of service months and amount of compensation credited to the employee by the Board under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, the Board shall appoint a qualified employee to make a determination with respect to such matter. The employee appointed by the Board shall promptly render a decision. Written notice of such decision shall be communicated to the employee within 30 days after such decision is made. Such decision shall include notification of the employee's right to reconsideration of the initial decision as provided in § 260.3. For purposes of this section, a timely request to amend an employee's record of service months and compensation maintained under the Railroad Retirement Act shall be filed within four years after the date on which the report of service months and compensation was required to be made to the Board by the employee's employer. *See* § 211.16 of this chapter.

6. In § 260.3 the heading, paragraph (a) introductory text, paragraphs (b) through (d), and paragraph (f) are revised to read as follows:

§ 260.3 Request for reconsideration of initial decision.

(a) *Right to file request for reconsideration.* Every claimant shall have the right to file a request for reconsideration of an initial decision described in § 260.1(a) or in § 260.2. *Provided, however,* That:

* * * * *

(b) *Written request for reconsideration.* A written request for reconsideration may be filed with any office of the Board within 60 days from the date on which notice of the initial decision is mailed to the claimant. The claimant shall state the basis for the reconsideration request and provide any additional evidence which is available. No hearing will be provided.

(c) *Right to further review of initial decision.* The right to further review of an initial decision shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the claimant for failing to file a timely request for reconsideration.

(d) *Timely request for reconsideration.* In determining whether the claimant has good cause for failure to file a timely request for reconsideration the bureau director shall consider the circumstances which kept the claimant from filing the request on time and if any action by the Board misled the claimant. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision;

(5) An unusual or unavoidable circumstance existed which demonstrates that the claimant would not have known of the need to file timely or which prevented the claimant from filing in a timely manner; or

(6) The claimant thought that his or her representative had requested reconsideration.

(e) * * *

(f) *Timely review.* The Board shall make every effort to issue a decision upon reconsideration and send a copy of the decision to the claimant within 60 days of the date that the decision for reconsideration is filed.

(g) * * *

7. In § 260.4 the heading is revised, and paragraphs (b) through (i) are revised to read as follows:

§ 260.4 Request for waiver of recovery of an overpayment and/or for reconsideration of an initial erroneous payment decision.

* * * * *

(b) *Request for waiver of recovery and/or reconsideration of an erroneous payment decision and for a personal conference.* A request for reconsideration of an erroneous payment decision must be filed in accordance with § 260.3(b) of this part. A request for waiver of recovery of an overpayment decision and for a personal conference under this section shall be in writing and addressed to the field office of the Board set forth in the initial decision letter or to the Debt Recovery Manager and shall be filed within 60 calendar days from the date on which notice of the overpayment decision was sent to the beneficiary. The beneficiary shall state in the request whether he or she elects to have a personal conference. If the beneficiary does not elect to have a personal conference with respect to his or her request for waiver of recovery or for reconsideration of the overpayment decision, he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(c) *Right to further review of an initial overpayment decision.* The right to further review of an initial overpayment decision shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in § 260.3(b) of this part (60 days) or good cause, as defined in section 260.3(d) of this part, is shown by the beneficiary for failing to file a timely request for reconsideration. Nothing in this section shall be taken to mean that waiver of recovery will not be considered in these cases where the request for waiver is not filed within 60 days, but action to recover the erroneous payment will not be deferred if such a request is not filed within 60 days. Any amounts recovered prior to the date on which the request for waiver as permitted under the preceding sentence is filed shall not be waived under part 255 of this chapter.

(d) *Delay in commencement of recovery of erroneous payment.* Where a timely request for waiver or reconsideration is filed as provided in this section, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such request for waiver or reconsideration has been made and notice thereof mailed to the claimant.

(e) *Impartial review.* Upon receipt of a timely request for personal conference under this section, the Board shall promptly arrange for the selection of a Board employee to conduct a personal conference in the case. The employee designated to conduct the personal conference under this section shall not have had any prior involvement with the initial erroneous payment decision and shall conduct the personal conference in a fair and impartial manner. The employee designated to conduct the personal conference under this section shall promptly schedule a time and place for the personal conference and promptly notify the beneficiary of such. If the beneficiary agrees, the personal conference may be conducted by telephone.

(f) *Personal conference.* The beneficiary shall upon request have the opportunity to review, prior to the personal conference, his or her claim folder and all documents pertinent to the issues raised. A personal conference conducted under this section shall be informal. At the personal conference the beneficiary shall be afforded the following rights:

(1) To present his or her case orally and to submit evidence, whether through witness or documents;

(2) To cross-examine adverse witnesses who appear at the personal conference; and

(3) To be represented by counsel or other person.

(g) *Preparation of recommended decision.* Upon completion of the personal conference the employee who conducts the personal conference shall prepare a summary of the case including a statement of the facts, the employee's findings of fact and law, and a recommended decision.

(h) *Timely review.* The Board shall make every effort to render a decision with respect to the beneficiary's request for reconsideration of the initial erroneous payment determination and/or waiver of recovery and notify the beneficiary of that decision within 60 days of the date that the request for reconsideration and/or waiver is filed or the date that the summary of the case is received from the employee who conducts the personal conference, whichever is later.

(i) *Right to appeal adverse decision.* If the Board renders a decision adverse to the beneficiary, he or she may appeal the decision to the Bureau of Hearings and Appeals, as provided in § 260.5 of this part.

(j) * * *

8. The heading and § 260.5 are revised to read as follows:

§ 260.5 Appeal from a reconsideration decision.

(a) *General.* Every claimant shall have a right to appeal to the Bureau of Hearings and Appeals from any reconsideration decision with which he or she disagrees.

(b) *Appeal from a reconsideration decision.* Appeal from a reconsideration decision shall be made by filing the form prescribed by the Board for such purpose. Such appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the reconsideration decision is mailed to the claimant. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30 day period following the date of the letter sending the form to the claimant.

(c) *Right to review of a reconsideration decision.* The right to review of a reconsideration decision shall be forfeited unless an appeal is filed in the manner and within the time prescribed in this section. However, when a claimant fails to file an appeal with the Bureau of Hearings and Appeals within the time prescribed in this section, the hearings officer may waive this requirement of timeliness. Such waiver shall only occur in cases where the claimant has made a showing of good cause for failure to file a timely appeal. Good cause for failure to file a timely appeal will be determined by a hearings officer in the manner prescribed in § 260.3(d) of this part.

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and Appeals, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Impartial review.* Within 30 days after the claimant has filed a proper appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act on the appeal. The Director of Hearings and Appeals may, if the Bureau of Hearings and Appeals' caseload dictates, appoint a qualified Board employee, other than a hearings officer assigned to the Bureau of Hearings and Appeals, to act as a hearings officer with respect to a case. Such hearings officer shall not have any interest in the parties or in the outcome of the proceedings, shall not have directly participated in the initial decision or the reconsideration decision from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial decision.

(f) *Power of hearings officer to conduct hearings.* In the development of appeals, the hearings officer shall have the power to hold hearings, require and compel the attendance of witnesses by subpoena or otherwise in accordance with the procedures set forth in part 258 of this chapter, administer oaths, rule on motions, take testimony, and make all necessary investigations.

(g) *Evidence presented in support of appeal.* (1) The appellant, or his or her representative, shall be afforded full opportunity to present testimony, or written evidence or exhibits upon any controversial question of fact; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by the appellant or his or her representative, the hearings officer shall provide the appellant or his or her representative with a copy of such evidence. In such event, the appellant shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. The appellant may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

(h) *Submission of written argument in lieu of oral hearings.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

(i) *Conduct of oral hearing.* (1) In any case in which an oral hearing is to be held, the hearings officer shall schedule a time and place for the conduct of the hearing. The hearing shall not be open to the public. The hearings officer shall promptly notify by mail the party or parties to the proceeding as to the time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(2) If the appellant objects to the time or place of the hearing, he or she must notify the hearings officer no later than 5 calendar days before the time set for the hearing. The appellant must state the reason for his or her objection. If at all possible, the request should be in writing. The hearings officer will change the time or place of the hearing if he or she finds there is good cause to do so.

(3) The hearings officer shall rule on any objection timely filed by a party under this paragraph (i) and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the

hearing. The hearings officer also may limit or expand the issues to be resolved at the hearing.

(4) If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the hearings officer a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the hearings officer a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(5) If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

(j) *Record of evidence considered.* The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by the appellant or by his or her duly authorized representative.

(k) *Extension of time to submit evidence.* Except where the hearings officer has determined that additional evidence not offered by the appellant at or prior to the hearing is available, the record shall be closed as of the conclusion of the hearing. The appellant may request an extension of time to submit evidence and the hearings officer will grant the request upon a showing of good cause for failure to have submitted the evidence earlier. The extension shall be for a period not exceeding 30 days.

(l) *Hearing by telephone.* In the discretion of the hearings officer, any hearing required under this part may be conducted by telephone conference. (The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0007)

§ 260.8 [Amended]

9. In § 260.8, remove the word ''bureau'' wherever it appears and add in its place the word ''office''.

10. Section 260.9 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h), by revising paragraph (b), adding a new paragraph (d), and by revising redesignated paragraph (e) and redesignated paragraph (f) to read as follows:

§ 260.9 Final appeal from a decision of the hearings officer.

(b) *Appeal from decision of hearings officer.* Final appeal from a decision of a hearings officer shall be made by the execution and filing of the final appeal form prescribed by the Board. Such appeal must be filed with the Board within 60 days from the date upon which notice of the decision of the hearings officer is mailed to the appellant at the last address furnished by him or her. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, Provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30 day period following the date of the letter sending the form to the claimant.

(c) * * *

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Submission of additional evidence.* Upon final appeal to the Board, the appellant shall not have the right to submit additional evidence. However, the Board may grant a request to submit new evidence where new and material evidence is available that, despite due diligence, was not available before the decision of the hearings officer was issued. The Board may also obtain new evidence on its own motion. Upon admission of new evidence, the Board, at its discretion, may:

(1) Vacate the decision of the hearings officer and remand the case to the Bureau of Hearings and Appeals for issuance of a new decision. The decision of the hearings officer on remand may be appealed to the Board in the manner described in paragraph (b) of this section; or

(2) Return the case to the hearings officer for further consideration with direction to submit a recommended decision to the Board.

(f) *Decision of the Board.* The decision of the Board shall be made upon the record of evidence developed by the hearings officer and any additional evidence admitted pursuant to paragraph (e) of this section. The appellant may submit additional argument in writing with the appeal to the Board. The appellant shall have no right to an oral presentation before the Board except where the Board so permits. Such presentation shall be limited in form, subject matter, length, and time as the Board may indicate to the appellant.

* * * * *

11. The heading, and § 260.10 are revised to read as follows:

§ 260.10 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

12. The authority citation for part 320 continues to read as follows:

Authority: 45 U.S.C. 355 and 362(1).

§ 320.5 Initial determinations.

13. In § 320.5, following the words ''Director of'', remove the words ''Unemployment and Sickness

Insurance'' and add in their place the words ''Policy and Systems''.

14. In § 320.6, the introductory paragraph of § 320.6(b) is revised, a new paragraph (b)(8) is added, paragraphs (d) and (e) are revised, and a new paragraph (f) is added to read as follows:

§ 320.6 Adjudicating office.

* * * * *

(b) *Field offices.* Field offices are authorized to make initial determinations on the following issues relating to eligibility for unemployment or sickness benefits, as the case may be:

* * * * *

(8) Whether a claimant's earnings attributable to days in a period for which he or she has registered for unemployment benefits exceed the amount of the applicable monthly compensation base.

* * * * *

(d) *Director of Operations.* The Director of Operations is authorized to make determinations on all issues of eligibility for unemployment and sickness benefits as set forth in paragraphs (b) and (c) of this section, and on any other issue not reserved to the Director of Policy and Systems by paragraph (e) of this section.

(e) *Director of Policy and Systems.* The Director of Policy and Systems shall adjudicate:

(1) The applicability of the disqualification in section 4(a–2)(iii) of the Railroad Unemployment Insurance Act if the claimant's unemployment results from a strike against a railroad employer by which he or she is employed; and

(2) Whether a plan submitted by an employer or other person or company qualifies as a nongovernmental plan for unemployment, sickness insurance, within the meaning of part 323 of this chapter.

(f) *Debt Recovery Manager.* The Debt Recovery Manager shall adjudicate:

(1) All requests for waiver of recovery of an erroneous payment made under the Railroad Unemployment Insurance Act; and

(2) Offers of compromise of debts arising out of the benefit provisions of the Railroad Unemployment Insurance Act.

15. In § 320.10, paragraph (e) is revised to read as follows:

§ 320.10 Reconsideration of initial determination.

* * * * *

(e) *Timely request for reconsideration.* In determining whether either the claimant or the base-year employer(s) has good cause for failure to file a timely request for reconsideration, the adjudicating office shall consider the circumstances which kept either the claimant or the base-year employer(s) from filing the request on time and whether any action by the Board misled either of them. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing.

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision; or

(5) The existence of an unusual or unavoidable circumstance which demonstrates that either the claimant or the base-year employer(s) would not have known of the need to file timely or which prevented either of them from filing in a timely manner.

(6) The claimant thought that his or her representative had requested reconsideration.

16. In § 320.11, paragraphs (a) and (f) are revised to read as follows, and in paragraphs (d), (e), and (g), remove the words ''Director of Unemployment and Sickness Insurance'', and add in their place the words ''Debt Recovery Manager''; also, in paragraphs (d) and (g), remove the word ''Director'' and add in its place the word ''Manager'' wherever it appears.

§ 320.11 Request for waiver of recovery.

(a) *Time Limitation.* The claimant shall have 60 days from the date of the notification of the erroneous payment determination in which to file a request for waiver, except that where an erroneous payment is not subject to waiver in accordance with § 340.10(e) of this chapter, waiver may not be requested and recovery will not be stayed. Such requests shall be made in writing and be filed by mail or in person at any Board office. The claimant shall, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case. A request solely for reconsideration of an overpayment shall not be considered a request for waiver under this section but shall be treated as a request for reconsideration under § 320.10 of this part.

* * * * *

(f) *Requests made after 60 days.* Nothing in this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 60 days, but action to recovery the erroneous payment will not be deferred if such request is not filed within 60 days, and any amount of the erroneous payment recovered prior to the date on which the request is filed shall not be subject to waiver under part 340 of this chapter. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of an erroneous payment or by selecting a particular method of repaying the debt. However, no waiver consideration shall be given to a debt which is settled by compromise.

* * * * *

17. Section 320.12 is revised to read as follows:

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

(a) Any party aggrieved by a decision under § 320.10 of this part or a claimant aggrieved by a decision under § 320.11 of this part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board for such purpose. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the decision on reconsideration or waiver of recovery was mailed to either a claimant or the base year employer(s). Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's or base-year employer's right to appeal, Provided that the claimant or base-year employer files the appeal form within the later of the 60-day period from the date of the reconsideration decision, or the 30-day period following the date of the Board's letter sending the appeal form to the claimant or base-year employer.

(b) If no appeal is filed within the time limits specified in paragraph (a) of this section, the decision of the adjudicating office under §§ 320.10 or 320.11 of this part shall be considered final and no further review of such decision shall be available unless the hearings officer finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this part.

(c) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and Appeals, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

18. In § 320.25, paragraphs (a) and (b) are revised to read as follows:

§ 320.25 Hearing of appeal.

(a) *Manner of conducting hearing.* The hearing shall be informal, fair, and impartial, and shall be conducted in such manner as to ascertain the substantial rights of the parties. The hearing shall not be open to the public.

(b) *Evidence presented in support of appeal.* (1) Any party, or his or her representative, shall be afforded full opportunity to present evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by a party or his representative, the hearings officer shall provide the parties or their representatives with a copy of such evidence. In such event, any party shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. Any party may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

* * * * *

19. Section 320.28 is revised to read as follows:

§ 320.28 Record of evidence considered.

The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by any party or by his or her duly authorized representative.

20. Section 320.39 is revised to read as follows:

§ 320.39 Execution and filing of appeal to Board from decision of hearings officer.

(a) An appeal to the Board from the decision of a hearings officer shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the hearings officer was mailed to the parties. The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, Provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the appeal form to the claimant. However, when a party fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if along with the final appeal, the party in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the party has good cause for not filing the final appeal form within the time limit prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 320.10(e) of this part in determining if good cause exists.

(b) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

21. The heading of § 320.40 is revised, and a new paragraph (d) is added to read as follows:

§ 320.40 Procedure before the Board on appeal from a decision of a hearings officer.

* * * * *

(d) Any party may submit additional argument in writing with the appeal to the Board. No party shall have the right to an oral presentation before the Board except where the Board so permits. Such presentation may be limited in form, subject matter, length, and time as the Board may indicate to the parties.

22. Section 320.49 is revised to read as follows:

§ 320.49 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

Dated: March 21, 2002.

By Authority of the Board, for the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–7392 Filed 3–28–02; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–167648–01]

RIN 1545–BA50

Amendments to Rules for Determination of Basis of Partner's Interest; Special Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to special rules on determination of basis of a partner's interest under section 705. The proposed regulations are necessary to coordinate sections 705 and 1032.

DATES: Written or electronic comments and requests for a public hearing must be received by June 27, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–167648–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday

between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–167648–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Barbara MacMillan or Rebekah A. Myers, (202) 622–3050; concerning submissions of comments or requests for a hearing, LaNita VanDyke at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2001, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–106702–00, 2001–4 I.R.B. 424) under section 705 of the Internal Revenue Code (Code) in the **Federal Register** (66 FR 315). Those proposed regulations provided guidance on the coordination of sections 705 and 1032 in situations where a corporation acquires an interest in a partnership that holds stock in that corporation, a section 754 election is not in effect with respect to the partnership for the taxable year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. Final regulations for the issues addressed in those proposed regulations are being published elsewhere in this issue of the **Federal Register**. These proposed regulations propose to revise the final regulations contained in § 1.705–2 of 26 CFR part 1 to address remaining issues that Treasury and the IRS considered during the development of the final regulations.

Explanation of Provisions

These proposed regulations provide guidance in situations in which a corporation owns a direct or indirect interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. For reasons similar to those explained in the preamble of the final regulations, in those situations it may be inconsistent with the intent of sections 705 and 1032 to increase the basis of the corporation's partnership interest by the full amount of any gain resulting from the partnership's sale or exchange of the stock which is not recognized by the corporation under section 1032.

Accordingly, the proposed regulations revise the purpose statement of § 1.705–2(a) to take into account situations involving such partnership distributions. The proposed regulations provide a specific rule implementing the revised purpose in single partnership cases. The proposed regulations also revise § 1.705–2(c) to clarify that the tiered partnerships rule applies to situations involving such partnership distributions.

In addition, the proposed regulations clarify that references in the regulations to stock of a corporate partner include any position in stock of a corporate partner to which section 1032 applies.

Proposed Effective Date

The regulations are proposed to apply to sales or exchanges of stock occurring after March 29, 2002.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

2. Section 1.705–1 is amended by revising paragraph (a)(7) to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(7) For basis adjustments necessary to coordinate sections 705 and 1032 in certain situations in which a partnership disposes of stock or any position in stock to which section 1032 applies of a corporation that holds a direct or indirect interest in the partnership, see § 1.705–2.

* * * * *

3. Section 1.705–2 is amended as follows:

1. Paragraph (a) is amended by adding a new sentence after the third sentence.
2. Paragraph (b) is amended by adding paragraph (b)(2).
3. Paragraph (c)(1) is amended by adding a new sentence after the second sentence.
4. Paragraph (d) is added.
5. Paragraph (e) is amended by removing the period at the end of the paragraph and adding a new phrase at the end of the paragraph.

The additions and revision read as follows:

§ 1.705–2 Basis adjustments coordinating sections 705 and 1032.

(a) * * * Similarly, in situations where a section 754 election was not in effect for the year in which a partnership distributes money or other property to another partner and that partner recognizes gain on the distribution, the remaining partners' inside basis and outside basis may not be equal. * * *

* * * * *

(b) * * *

(2) *Required adjustments relating to distributions.* (i) This paragraph (b)(2) applies in situations where a corporation owns a direct or indirect

interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the year in which the partnership made the distribution, a section 754 election had been in effect.

(ii) The provisions of this paragraph (b)(2) are illustrated by the following example:

Example. (i) A, B, and corporation C form partnership PRS. A and B each contribute $10,000 and C contributes $20,000 in exchange for a partnership interest. PRS has no liabilities. PRS purchases stock in corporation C for $10,000, which appreciates in value to $70,000. PRS distributes $25,000 to A in complete liquidation of A's interest in PRS in a year for which an election under section 754 is not in effect. PRS later sells the C stock for $70,000. PRS realizes a gain of $60,000 on the sale of the C stock. C's share of the gain is $40,000. Under section 1032, C does not recognize its share of the gain.

(ii) Normally, C would be entitled to a $40,000 increase in the basis of its PRS interest for its allocable share of PRS's gain from the sale of the C stock, but a special rule applies in this situation. If a section 754 election had been in effect for the year in which PRS made the distribution to A, PRS would have been entitled to adjust the basis of partnership property under section 734(b)(1)(A) by $15,000 (the amount of gain recognized by A with respect to the distribution to A under section 731(a)(1)). See § 1.734–1(b). Under § 1.755–1(c)(1)(ii), the basis adjustment under section 734(b) would have been allocated to the C stock, increasing its basis to $25,000. (where there is a distribution resulting in an adjustment under section 734(b)(1)(A) to the basis of undistributed partnership property, the adjustment is allocated only to capital gain property.)

(iii) If a section 754 election had been in effect for the year in which PRS made the distribution to A, the amount of gain that PRS would have recognized upon PRS's disposition of C stock would be $45,000 ($70,000 minus $25,000 basis in the C stock), and the amount of gain C would have recognized upon PRS's disposition of the C stock (absent the application of section 1032) would be $30,000 (C's share of PRS's gain of $45,000 from the stock sale). Accordingly, upon PRS's sale of the C stock, the increase in the basis of C's interest in PRS is $30,000.

* * * * *

(c)(1) * * * Similarly, if a corporation owns an indirect interest in its own stock through a chain of two or more partnerships, and a partnership in the chain distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, then upon any subsequent sale or exchange of the stock, the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of this section.

* * * * *

(d) *Positions in Stock.* For purposes of this section, stock includes any position in stock to which section 1032 applies.

(e) * * * , except that the fourth sentence of paragraph (a), paragraph (b)(2), and the third sentence of paragraph (c)(1) of this section are applicable with respect to sales or exchanges of stock occurring on or after March 29, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–7650 Filed 3–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 58 and 72

RIN 1219–AB24

Measuring and Controlling Asbestos Exposure

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking; notice of public meetings; notice of close of record.

SUMMARY: We, the Mine Safety and Health Administration (MSHA), are requesting information from the public concerning ways to increase protection to miners when they are working in environments where asbestos is present. We are concerned that miners may be exposed to asbestos at mining operations with the ore bodies containing asbestos. There is also a potential exposure at mine facilities with installed asbestos-containing material which may be disturbed. Miners who are exposed may also bring the substance home on their persons and clothes, and in their automobiles.

Exposure to asbestos can cause asbestosis, mesothelioma, lung cancer, and cancers of the digestive system. A recent report by the U.S. Department of Labor's Office of the Inspector General (OIG) recommended that MSHA lower its existing Permissible Exposure Limit (PEL) for asbestos to a more protective level and address take-home contamination from asbestos. The report also recommended that MSHA use Transmission Electron Microscopy (TEM) instead of Phase Contrast Microscopy (PCM) to analyze fiber samples that may contain asbestos. We intend to use the submitted information to help determine how we should proceed to address these issues.

We are also announcing in this document our intent to hold six (6) public meetings to allow early participation in the rulemaking by interested parties.

DATES: Comments on the advance notice of proposed rulemaking (ANPRM) must be received on or before June 27, 2002.

The public meeting dates and locations are listed in the Public Meetings section below under **SUPPLEMENTARY INFORMATION.**

You do not have to submit a written request to speak. There will be a sign-up sheet at each of the meeting locations. Speakers will speak in the order that they sign in. Speakers may also present information to the MSHA panel for inclusion in the rulemaking record.

The rulemaking record will close June 27, 2002.

ADDRESSES: Comments on the ANPRM may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as pertaining to this ANPRM and sent to: *comments@msha.gov.* Comments by fax must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Comments by mail must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

The public meeting dates and locations are listed in the Public Meetings section below under **SUPPLEMENTARY INFORMATION.**

This notice is available on our Web page at *http://www.msha.gov,* under Statutory and Regulatory Information. We intend to place the public comments on our website within five (5) working days after we receive them.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances; MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Mr. Nichols can be reached at *Nichols-Marvin@msha.gov* (e-mail), (703) 235–1910 (Voice), or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION:

I. Public Meetings

The public meetings will be held on the following dates and locations:

Date	Location	Phone
April 30th	Holiday Inn 1901 Emmet Street Charlottesville, VA 22901	(434) 977–7700
May 2nd	Ramada Inn 164 Fort Couch Road Pittsburgh, PA 15241	(412) 833–5300
May 14th	Days Inn 4212 W Sunset Blvd Spokane, WA 99224	(509) 747–2021
May 16th	Hampton Inn & Suites 800 Mason Street Vacaville, CA 95687	(707) 469–6200
May 29th	Best Western 90 E Main Street Canton, NY 13617	(315) 386–8522
June 12th	Days Inn 701 Hattrick Ave Virginia, MN 55734	(218) 744–2703

The public meetings will begin at 9:00 a.m. and end after the last speaker appears; and in any event, not later than 5:00 p.m. each day.

II. Background

Regulatory History

Our asbestos regulations date to 1967 and are based on the former U.S. Bureau of Mines standard of 5 mppcf (million particles per cubic foot of air). In 1969, the Bureau proposed and finalized a 2 mppcf and 12 fibers/ml (milliliter) standard. In 1970, the Bureau proposed to lower the limit to 5 fibers/ml, which was promulgated in 1974. We issued our current standard of 2 fibers/cc (cubic centimeter) in 1976 for coal mining and 2 fiber/ml in 1978 for metal and nonmetal mining. In 1989, we proposed as part of our Air Quality rulemaking to lower the PEL for asbestos to 0.2 fibers/cc (cubic centimeter), in line with then-current levels promulgated by the Occupational Safety and Health Administration (OSHA) in its Air Contaminants rulemaking. However, an appeals court decision invalidated OSHA's generic rulemaking approach, which had grouped categories of substances with similar properties under a single rulemaking. The Court ruled that the PEL for each substance must be supported by substantial scientific evidence of significant risk of material impairment of health, as if each substance were the subject of a separate substance-specific rule. Since we used an approach similar to OSHA's in our Air Quality proposed rule, we believed our rule would be subject to similar legal scrutiny. For this and other reasons, the air contaminants portion of the Air Quality proposed rule has not been finalized.

In 1994, OSHA promulgated a revised substance-specific asbestos standard that lowered the PEL and the short-term exposure limit to an eight (8) hour time-weighted average limit of 0.1 f/cc of air and to 1.0 f/cc as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected scientific evidence of increased asbestos-related disease risk to asbestos-exposed workers.

MSHA's existing rules at 30 CFR 56.5001(b) and 57.5001(b) states:

> The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. ''Asbestos'' is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term ''asbestos'' as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Asbestos is also covered in an existing coal rule for surface coal mines and surface work areas of underground coal mines under 30 CFR 71.702. The rule states:

> (a) The 8-hour average airborne concentration of asbestos dust to which miners are exposed shall not exceed two fibers per cubic centimeter of air. Exposure to a concentration greater than two fibers per cubic centimeter of air, but not to exceed 10 fibers per cubic centimeter of air, may be permitted for a total of 1 hour each 8-hour day. As used in this subpart, the term asbestos means chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos but does not include nonfibrous or nonasbestiform minerals. (b) The determination of fiber concentration shall be made by counting all fibers longer than 5 micrometers in length and with a length-to-width ratio of at least 3 to 1 in at least 20 randomly selected fields using phase contrast microscopy at 400–450 magnification.

Events Leading up to the Inspector General's Recommendations

In 1980, we requested that the National Institute for Occupational Safety and Health (NIOSH) investigate health problems at vermiculite operations, including one in Libby, Montana. The results of the NIOSH study were published in 1986 and indicated very high occupational exposure prior to 1974 at the Libby operation. The highest exposures were in the mill. In 1974, the mine began to use a wet process to concentrate vermiculite in the mill, and exposures dropped markedly. The study also pointed out an increased risk of lung cancer among the miners.

In November 1999, a Seattle newspaper published a series of articles on the unusually high incidence of asbestos-related illnesses and fatalities among individuals who had lived in Libby, Montana. The miners employed at the vermiculite mine in Libby, which produced approximately 89 percent of the world's supply of vermiculite from 1924 until 1991, were exposed to asbestos through the processing of ore and inadvertently carried the dust home on their clothes and in their personal vehicles, thereby continuing to expose themselves and family members. Because MSHA had jurisdiction over the mine, the OIG undertook an evaluation of our role in the Libby situation.

OIG Findings and Recommendations

The findings and recommendations of the OIG were published in a report dated March 22, 2001. The OIG found that MSHA had conducted regular inspections and personal exposure sampling at the Libby mine. The OIG concluded: ''we do not believe that more inspections or sampling would have prevented the current situation in Libby.'' The report made several recommendations to MSHA, three of which would require rulemaking. The OIG recommended that MSHA: (1) Lower the existing PEL to a more protective level; (2) use a more sensitive method, Transmission Electron Microscopy (TEM), to quantify fibers in our samples, rather than the Phase Contrast Microscopy (PCM) method currently used; and (3) address take-home contamination from asbestos.

Reducing the PEL

A finding of OSHA's 1984 risk assessment was that lowering the TWA PEL from 2 f/cc to 0.2 f/cc reduced the asbestos cancer mortality risk from lifetime exposure from 64 to 6.7 deaths per 1,000 exposed workers, respectively. OSHA estimated that the incidence of asbestosis would be 5 cases per 1,000 workers exposed for a working lifetime under the TWA PEL of 0.2 f/cc. In 1994, OSHA promulgated a revised substance-specific standard that lowered the asbestos PEL to an eight (8) hour time-weighted average limit of 0.1 f/cc of air. It also lowered the short-term exposure limit to 1.0 f/cc as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected scientific evidence of significant, asbestos-related disease risk at existing exposure levels. OSHA's risk assessment also showed that reducing exposure to 0.1 f/cc would further reduce, but not eliminate, significant risk. The excess cancer risk at that level would be reduced to a lifetime risk of 3.4 per 1,000 workers. These data indicate that if we adopt OSHA's asbestos PEL, the level of risk of asbestos-related diseases would be reduced substantially.

Analytical Method

At least two methods are generally used to analyze asbestos in air samples: Phase Contrast Microscopy (PCM) and Transmission Electron Microscopy (TEM). MSHA uses the PCM method. A difference between the two methods is the level of magnification available to identify and count fibers. The PCM method magnifies fibers between 400 and 450 fold whereas the TEM method magnifies fibers 20,000 fold or greater. This increased magnification allows for the mineralogical identification of the fiber and allows a more accurate count of asbestos fibers for purposes of evaluating compliance with the PEL. OSHA uses PCM in their method ID–160 to measure asbestos in air. The NIOSH Manual of Analytical Methods (NMAM) includes asbestos methods 7400 and 7402. Method 7400 is a PCM procedure, equivalent to the OSHA methods. Method 7402 uses TEM to identify fibers. The OIG recommended that MSHA use TEM to analyze asbestos samples.

Take-Home Contamination

Workers can carry hazardous substances home from work on their clothes, bodies, tools, and other items. They can unknowingly expose themselves and their families to these substances, causing various health effects. In our 1989 Air Quality proposed rule, we addressed take-home contamination. As proposed, miners would have been required to wear protective clothing and other personal protective equipment before entering areas containing asbestos. They would have also been required to remove their protective clothing and store them in adequate containers to be disposed of or decontaminated by the operator. This is a common practice when workers are exposed to particularly hazardous materials, such as carcinogens, in carrying out their regular job duties. The OIG recommended that similar requirements be incorporated into a new asbestos rule. OSHA, NIOSH, MSHA, and the Department of Labor OIG have addressed the issue of take-home contamination.

OSHA

The OSHA asbestos standards address protective work clothing and equipment (*i.e.,* provision and use; removal and storage; cleaning and replacement) and hygiene facilities and practices (*i.e.,* change rooms; showers; lunchrooms) to prevent take-home contamination [OSHA: 29 CFR 1910.1001 and 29 CFR 1926.58].

NIOSH

The Workers' Family Protection Act of 1992 (Public Law 102–522, 29 U.S.C. 671a) directed NIOSH to study contamination of workers' homes by hazardous substances (including asbestos) transported from the workplace [NIOSH: ''Protect Your Family: Reduce Contamination at Home.'' DHHS (NIOSH) Publication No. 97–125. NIOSH, Cincinnati, OH (1997)]. The NIOSH study documented cases of home contamination from 28 countries and 36 states in the United States. Reported cases covered a wide variety of materials (including asbestos), industries, and occupations.

NIOSH discussed the prevention of take-home contamination from asbestos [NIOSH (1997)]. The means by which hazardous substances (including asbestos) have reached workers' homes and families include the following: work clothing; tools and equipment; other items taken home from work; the worker's body; cottage industries (*i.e.,* work performed at home); and family visits to the workplace. Asbestos reaching workers' homes has occurred worldwide, resulting in all forms of asbestos disease among workers' family members, including over 100 identified deaths from mesothelioma in the United States.

MSHA

Our 1989 proposed rule on air quality delineated provisions for the use of protective clothing and equipment and hygiene facilities and practices to minimize take-home contamination from asbestos [54 FR 35760, August 29, 1989]. Due to the long-term health risks, carcinogens like asbestos warrant special safety requirements. Under the proposed rule, miners would have had to wear full-body protective clothing (*e.g.,* smocks, coveralls, or long-sleeved shirts and pants and other personal protective equipment) before entering an area in which asbestos-containing ore or material were processed or handled. Upon exiting such areas, miners would also have been required to remove their protective clothing and equipment and have them stored in impervious (*i.e.,* air-tight) containers, which would either be disposed of or decontaminated by the employer. Finally, miners would have had to thoroughly cleanse themselves and shower upon leaving at the end of the workday. NIOSH stated that these measures are effective in reducing or eliminating take-home contamination [1].

Department of Labor Office of the Inspector General

The Department of Labor OIG supported the development and implementation of special safety requirements (*e.g.,* availability, training, and proper use of personal protective clothing and equipment; appropriate storage, disposal, and decontamination of personal protective clothing and equipment; suitable hygiene facilities and practices) for asbestos and vermiculite mining and milling [USDOL: Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana. Report No. 2E–06–620–0002, March 22, 2001. USDOL, Office of the Inspector General, Office of Analysis, Complaints and Evaluations, Washington, DC (2001).]

MSHA's Asbestos Field Sampling and Awareness of Asbestos Hazards

Recently, we adopted new sampling techniques and have increased the scope of sampling for airborne asbestos fibers at mines in an attempt to better determine miners' exposure levels to asbestos. Our efforts have included taking samples at all existing vermiculite, taconite, talc, and other mines to determine whether asbestos is

[1] NIOSH: Report to Congress on Workers' Home Contamination Study Conducted Under The Workers' Family Protection Act (29 U.S.C. 671a). DHHS (NIOSH) Publication No. 95–123. NIOSH, Cincinnati, OH (September 1995).

present and at what levels. Since the Spring of 2000, we have taken almost 900 samples at more than 40 operations employing more than 4,000 miners. A preliminary review and analysis by the Agency indicate few exposures above the OSHA 8-hr TWA of 0.1 f/cc occurred during the sampling period. A final report on the sampling results will be made public as soon as it is available by placing it on our Web site at *http://www.msha.gov,* under the link to Special Initiatives, Asbestos, a single source page. Also, the report will be made part of this rulemaking record.

During those sampling events, we discussed with miners and mine operators the potential hazards of asbestos and the types of preventive measures that could be implemented to reduce exposures. We are encouraging mine operators to comply with the OSHA asbestos PEL of 0.1 f/cc. Our current 8 hour PEL is 20-fold higher than OSHA's. Our intent in using this approach is to educate operators to recognize that a ''standard of care'' based on lower exposure will reduce the potential for illness and liability.

Impact of the Rule

We are assessing both the costs and benefits of intended regulations in accordance with Executive Order 12866. Under the Executive Order, we are to base decisions on the best reasonably obtainable scientific, technical, economic, and other data and information concerning the need for and the consequences of the regulations. We are seeking information and comment on the benefits and costs related to the issues addressed in this ANPRM.

III. Issues

We are seeking any supporting information or data that would help us evaluate whether to lower our asbestos PEL, to revise existing PCM or TEM methods and criteria specifically for the mining industry, to implement safeguards to limit take-home exposures, and the likely impact on benefits and costs of such rulemaking actions. In particular, we encourage the public to respond to the questions posed below.

Please be as specific as possible in your responses to the questions and in suggesting alternatives. When you comment, we request that you include the rationale for the comment rather than a short ''yes'' or ''no'' answer. Please also include specific examples and impact estimates where possible to support your rationale. This will help us to effectively evaluate and analyze your comments.

1. Asbestos PEL

We are considering rulemaking to lower both the eight (8) hour time-weighted average and the short-term exposure limits, and request comments on the most appropriate fiber concentrations to designate in light of their health risk and their technological and economic feasibility.

We seek information, data, and comments on the following:

a. What exposure limit would provide the appropriate level of protection to exposed miners? Would adopting the OSHA limits afford sufficient protection to miners?

b. MSHA's recent field sampling data show that none of the samples collected exceed OSHA's 8 hour time weighted average of 0.1 f/cc when analyzed using the TEM method. Considering the low fiber levels observed, what would be an appropriate agency action?

2. Analytical Method

We are considering the use of TEM rather than PCM to analyze fiber samples that may contain asbestos. We seek information, data, and comment on the following:

c. What is the advantage for MSHA to use TEM to initially analyze airborne fibers collected on all filters?

d. What is the availability and cost of commercial TEM analysis services?

e. Should we measure PEL compliance using TEM?

f. Are there studies which correlate asbestos exposure determined by TEM with incidence of asbestos disease?

g. Are there data comparing PCM to TEM fiber counts from the same filter for the mine environment?

h. What method is most appropriate for MSHA to use (*e.g.,* EPA, ASTM, OSHA, or NIOSH) to analyze bulk samples for asbestos in the mining industry?

3. Take-Home Contamination

We are also considering methods of reducing take-home contamination from asbestos. We specifically request information, data, and comments on the following:

i. How and/or should MSHA require operators to address take-home contamination from asbestos?

j. How should MSHA asbestos regulations provide for any special needs of small mine operators?

k. What technical assistance (*e.g.,* step-by-step instructions, model programs, certification of private programs) should we provide to mine operators when they develop a program to reduce take-home contamination from asbestos?

l. What types of protective clothing are miners currently using when working in areas where asbestos is present?

m. What types of preventive measures (*e.g.,* appropriate disposal of contaminated clothing; hand and face washing; showering) are currently in use when miners leave areas where asbestos may be present?

4. Sampling and Awareness of Asbestos Hazards

We are reviewing the adequacy of our field sampling methods for asbestos and how sampling results are being used, by both MSHA and operators, to protect miners. We specifically request information, data, and comments on the following:

n. How can mineral dust interference be most accurately removed from the samples?

o. Does our current field sampling meet the needs of the mining community?

p. How should mine operators ensure that miners are aware of potential asbestos hazards at the mine site and provide adequate protection?

q. What educational and technical assistance (e.g., step-by-step instructions, model programs) should we provide to mine operators when we develop a program to sample and analyze for asbestos?

r. What other factors, circumstances, or measures should MSHA consider when engineering controls can not reduce asbestos exposure below the PEL?

5. Impact

We anticipate that the benefits of a rulemaking addressing measurement and control of asbestos would be the reduction or elimination of asbestos-related diseases (cancers and asbestosis) arising from exposure to asbestos. We anticipate there will be operator and agency costs associated with lowering our asbestos PEL, reducing take-home contamination, and using TEM to analyze fiber samples.

We request information, data, and comments on the following:

s. How many miners are currently being exposed to asbestos?

t. What engineering controls and personal protective equipment are currently being used to protect miners from exposure to asbestos and to prevent take-home contamination? What are the costs of these engineering controls and personal protective equipment?

u. What would be the benefits of a rule that would reduce exposure to asbestos?

v. What would be the costs of such a rule?

Dated: March 22, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–7467 Filed 3–26–02; 12:05 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA22

Amendments to the Bank Secrecy Act Regulations; Requirement That Casinos and Card Clubs Report Suspicious Transactions; Request for Additional Comments

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Proposed regulations: Reopening of comment period and request for additional comments.

SUMMARY: FinCEN is soliciting additional comments concerning the proposed standard for the reporting by casinos and card clubs of suspicious activity. To allow the submission of such comments, it is re-opening for 60 additional days the comment period for the relevant notice of proposed rulemaking.

DATES: Additional written comments about the reporting standard must be received on or before May 28, 2002.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, Attention: NPRM—Casino SAR Rule. (Comments may also be submitted by electronic mail to the following Internet address: *''regcomments@fincen.treas.gov''* with the caption in the body of the text ''Attention: NPRM—Casino SAR Rule.'') For additional instructions and terms for the submission of comments, see Supplementary Information under the heading ''IV. Submission of Comments'' in the notice of proposed rulemaking, published on May 18, 1998, about casino reporting of suspicious transactions. 63 FR 27230, 27237 (May 18, 1998).

FOR FURTHER INFORMATION CONTACT: Peter G. Djinis, Executive Assistant Director (Regulatory Policy), FinCEN, (703) 905–3930; Judith Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION: On May 18, 1998, FinCEN issued a notice of proposed rulemaking, 63 FR 27230 (the ''Notice''), under the terms of the Bank Secrecy Act,[1] concerning the reporting by casinos [2] of suspicious transactions.[3] The comment period for the Notice ended on September 15, 1998.

FinCEN received 18 comment letters on the Notice. In addition, FinCEN held four public meetings on the Notice during the comment period. The meetings were held in New Orleans, Louisiana on July 14, 1998; Chicago, Illinois on July 23, 1998; Scottsdale, Arizona on August 6, 1998; and New York City, New York on September 9, 1998.

One of the primary issues raised in the written comments and public meetings was the nature of the proposed standard for reporting of suspicious transactions. As explained more fully below, FinCEN has determined to reopen the comment period with respect to that issue.

I. The Proposed Reporting Standard.

The rule proposed in the Notice would require a casino to report a transaction to the Treasury Department, if that transaction is:

conducted or attempted by, at, or through a casino, and involves or aggregates at least $3,000 in funds or other assets, *and the casino knows, suspects, or has reason to suspect* that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or any other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.[4] (Emphasis added.)

The proposed reporting standard (except for differing dollar thresholds) is the same as that adopted by the Treasury Department for suspicious transaction reporting by depository institutions, money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks. *See* 31 CFR 103.18(a)(2), relating to suspicious activity reporting by banks, and 31 CFR 103.20(a)(2), relating to suspicious activity reporting by certain money services businesses.[5] It is also the same reporting standard that the Treasury Department proposed in a Notice of Proposed Rulemaking relating to extension of the requirement to report suspicious activity to brokers and dealers in securities.[6]

Commenters on the Notice have argued strongly, however, that requiring reporting if a casino ''has reason to suspect'' that a transaction falls into one of the three categories of reportable transaction,[7] is inappropriate, because the ''fast-paced, entertainment-filled environment'' at casinos is vastly different from the environment of most other financial institutions. They assert that customers in a casino cannot be relied upon to act in ways consistent with any particular norm of financial transaction, but may be motivated in the way they transfer and wager funds by factors such as gambling strategies, intuition, or gambling superstitions. The wider range of motivations reflected in

[1] Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–59, and 31 U.S.C. 5311–5330. The Bank Secrecy Act authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures. Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, P.L. 107–56.

[2] In this document, the term ''casino'' when used alone, includes a reference both to casinos and to card clubs, as the latter term is defined in 31 CFR 103.11(n)(8), unless the context clearly indicates otherwise. See 31 CFR 103.11(n)(7)(iii).

[3] The Notice also proposed related changes to the provisions of 31 CFR 103.54 (subsequently re-numbered as 103.64) relating to casino compliance programs.

[4] *See* proposed 31 CFR 103.21(a)(2)(i)–(iii), 63 FR at 27239 (May 18, 1998).

[5] Banks have been required to file suspicious activity reports since April 1, 1996. The suspicious transaction reporting rules for depository institutions were renumbered as part of the rulemaking relating to the reporting of suspicious transactions by certain money services businesses. *See* 65 FR 13683 (March 14, 2000). The suspicious transaction reporting rules for the categories of money services businesses described in the text took effect on January 1, 2002.

[6] See 66 FR 67670 (December 31, 2001).

[7] Because the standard requires reporting when a financial institution has ''reason to suspect'' that a transaction is suspicious, the standard is referred to in the comments and in this document as an ''objective reporting standard.''

the actions of casino customers, in turn, will multiply the difficulties that casinos face in seeking to determine which transactions are truly suspicious. The commenters thus assert that casinos should be subject to a standard in which reporting of suspicious activities is required only if a casino ''knows, suspects, or, *in the judgment of the casino,* has reason to suspect'' that a transaction is suspicious. (Emphasis added.) [8]

FinCEN is concerned that the commenters may have misperceived the meaning of the reporting standard proposed in the Notice. A ''reason to suspect'' standard takes as its baseline the practical experience and expertise of industry officials in evaluating risks in the enterprise involved. Financial institutions (and different institutions within a particular segment of the financial industry) operate in different ways and under different conditions, and the self-adjusting quality of a ''reason to suspect'' standard is what makes that standard sufficiently flexible to apply, for example, to international or money center banks, community banks, non-bank money transmitters, and sellers of money orders.

Casino operations, themselves, have different parts. Transactions that take place at a casino's cage—where chips and tokens are purchased or redeemed, customers' deposit and credit accounts are opened or settled, checks are purchased or cashed, and funds transfers are initiated or received—are little different (other than for the use of gambling chips and tokens) than the sorts of transactions that can take place at a teller's window in a depository institution. Transactions on a gaming floor (such as wagering of currency or purchasing of currency for chips), take place in a far different environment. But a ''reason to suspect'' standard adjusts, by its very nature, to the different sorts of activities and the different environments in which financial transactions take place, whether within one financial institution or as between financial institutions. Whether a casino has reason to suspect that a transaction or series of transactions is suspicious under the terms of the rule may, and likely will, involve far different considerations for wagering activity (for precisely the reasons the commenters cite) than for transactions at a casino cage or a slot booth. But that does not mean that it is inappropriate to ask that an institution meet such a standard in evaluating the (different) relevant facts.

Commenters also argued that language protecting a casino's judgment was absolutely necessary to bar after-the-fact determinations by enforcement officials about a casino's decision not to report a transaction. They suggested that casinos would find it necessary, in order to defend their judgment, to document their reasons for not filing a suspicious activity report with respect to transactions that meet the reporting threshold. [9]

Again, FinCEN believes that the commenters may have misperceived the ''reason to suspect'' standard. In adopting the rule requiring the reporting of suspicious transactions by depository institutions, FinCEN stated that it anticipated that, ''in general the area for inquiry in the case of failure to report will center upon both the facts of the particular failure and what the failure indicates about the bank's compliance systems and attention to the Bank Secrecy Act rules in general.'' 61 FR 4326, 4330 (February 5, 1996). The same logic applies to all categories of financial institutions.

The determinative question, in all cases, is whether a ''reason to suspect'' existed at the time and in the circumstances, in which the transaction occurred whenever and by whomever the question is asked.[10] By way of contrast, the standard proposed by the commenters would appear to leave the decision whether to file a suspicious activity report entirely to the discretion of the casino and to preclude altogether review of the casino's compliance with any reporting requirement, unless the government were able to show that the casino's employees possessed actual knowledge or suspicion that they were witnessing or participating in money laundering or structuring of transactions, or in other types of financial crime.

The proposed rule asks a casino to exercise due diligence in evaluating the facts before the institution and seeking to identify those transactions that should appear suspicious in light of the particular circumstances and industry experience.[11] The corresponding rules ask the same of banks and money services businesses.

Casinos understand their business and the nature of the gaming industry. The extent to which casinos carefully monitor gaming activities for loss-protection and other business purposes is well documented. Within that context, a duty to investigate potentially suspicious activity further—to exercise due diligence—would appear no more or less difficult for a casino than for a bank or money transmitter.

As a final note, the rule that Treasury ultimately promulgates requiring casinos to file suspicious transaction reports will apply to casinos located in Nevada. Since May 1985, casinos located in Nevada have been exempt from certain Bank Secrecy Act requirements pursuant to a memorandum of agreement between the Treasury Department and the State of Nevada on behalf of Nevada casinos under 31 CFR 103.45(c)(1) (subsequently renumbered as 103.55).[12] By its terms, the memorandum of agreement only exempts Nevada casinos from the BSA requirements applicable to casinos at the time it was signed, including currency transaction reporting and recordkeeping requirements. Treasury's proposal to extend a requirement to report suspicious activity to casinos would therefore not be covered by the exemption contained in the memorandum of agreement.

In order to obtain an exemption from a Bank Secrecy Act requirement, a state must subject the class of transactions for which the exemption is sought to requirements that the Secretary of the Treasury deems ''substantially similar'' to those promulgated by Treasury under Title 31 with respect to the class of transactions.[13] In addition, there must be adequate provision for enforcement of the class of transactions to be exempted. If Treasury ultimately adopts

[8] Regulations of the Nevada Gaming Control Board, requiring suspicious transaction reporting by casinos in that state, under the Nevada state regulatory system, adopt the ''subjective standard'' sought by the commenters.

[9] Commenters predicted substantial overreporting in an attempt by casinos to avoid later questions, and some commenters even suggested that casinos might file suspicious activity reports with respect to all transactions that exceeded the reporting threshold.

[10] The determination whether a transaction at a casino cage or slot booth, or on the gaming floor, requires reporting will naturally require analysis and judgment on the part of casino personnel, in light of their experience and industry experience. But it is not the purpose of the proposed rule to ''second guess'' casino executives; in fact, articulation of a ''reason to suspect'' standard can as easily restrict government flexibility in challenging casino officials' judgments with the benefit of hindsight, as it can open questions about whether a particular casino's judgments, on particular facts, met that standard.

[11] The rule proposed in the Notice specifically requires the incorporation of considerations relating to the reporting of suspicious transactions into a casino's Bank Secrecy Act compliance programs. *See* proposed 31 CFR 103.54(a)(2)(ii) and (a)(2)(v)(B), 63 FR 27230, 27236–37, 27240. (Section 103.54 was subsequently renumbered as 103.64)

[12] 31 CFR 103.55(c)(1) provides that the Secretary of the Treasury may grant exemptions to the casinos in any state ''whose regulatory system substantially meets the reporting and recordkeeping requirements of this part.''

[13] *See* 31 U.S.C. 5318(a)(5), which was added to the BSA by section 410 of the Money Laundering Suppression Act, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub.L. 103–325 (September 23, 1994).

a suspicious transaction reporting requirement that incorporates an objective reporting standard, the difference between such a standard and a subjective reporting standard, a distinction with respect to which commenters have expressed considerable concern, would be a significant factor in determining whether Nevada's suspicious transaction reporting rule would be ''substantially similar'' to Treasury's rule. For this reason, we are formally encouraging Nevada casinos to comment on the ''reason to suspect'' standard contained in the Notice.

II. Request for Additional Comments

FinCEN is reopening the comment period for the reporting of suspicious transactions by casinos, in order to solicit responses to the discussion of the ''reason to suspect'' standard that appears above, and additional views about the best way to apply to casinos the due diligence obligations inherent in suspicious transaction reporting.

Specifically FinCEN requests additional comments on the following issues:

(1) The application of the objective ''reason to suspect'' standard (as proposed in the Notice and as further explained in this document) to the casino industry, given the self-adjusting nature of such a standard. In particular, FinCEN invites comment about whether it would be helpful to add language to the rule or preamble explaining that the objective standard necessarily takes into account differences in the operating environment in various parts of a financial institution (for example, as between casino cage and gaming floor activities).

(2) The ability of casinos to satisfy a due diligence-based standard, especially given the nature of existing casino risk management and customer monitoring practices.

(3) The extent to which the due diligence notion addresses concerns about possible subsequent review by the government of a financial institution's decisions that a report is (or is not) required in particular cases.

(4) The meaning of the phrase ''in the judgment of the casino, has reason to suspect,'' proposed by several commenters, and the result of its application.

Dated: March 22, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–7558 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[0720–AA67]

Collection From Third Party Payers of Reasonable Charges for Health Care Services

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is to implement provisions of the National Defense Authorization Act for Fiscal Year 2000, which amended the statutory obligation of the third party payers to replace the ''reasonable cost'' basis of the Third Party Collection Program with a ''reasonable charge'' basis, and also authorized methods to be used for the computation of reasonable charges. We propose to adopt the ''reasonable charge'' basis and generally to use CHAMPUS payment rates as the reasonable charges under the Program. This rule also implements the provisions added by the National Defense Authorization Act for Fiscal Year 2002 related to the charging of fees for care to civilians who are not covered beneficiaries.

DATES: Comments must be received by May 28, 2002.

ADDRESSES: Send comments to Lt. Col. Rose Layman, Uniform Business Office, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, Resource Management, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Rose Layman at (703) 681–8910.

SUPPLEMENTARY INFORMATION: Our goal is to publish a final rule in early 2002 with an effective date of April 1, 2002. In keeping with our intention to adopt a rate structure more consistent with the civilian health insurance industry practice, this rule proposes an itemized methodology for outpatient services. A combination of our current rate methodology, based on cost, and new methodology based on CHAMPUS payment rates will be used.

Due to the extensive system and practices required in over 500 facilities, a phased-in approach to our methodology will be applied. The current inpatient methodology of an all-inclusive DRG-based rate (including professional charges) will continue to be utilized for FY 02. In FY 03, we will begin to bill separately for hospital charges (using a DRG-based schedule of costs) and professional charges (using the CPT–4 based CHAMPUS Maximum Allowable Charges (CMAC) rates). Our program changes in FY 02 will focus on outpatient services.

Our analysis indicates that the transition from reasonable costs to reasonable charges will most likely not increase the amount of money collected for the services provided. We undertook an analysis comparing our current rate structure based on cost data with the charges based on the CMAC rates. An initial sample of 500 patient encounters was obtained from Military Treatment Facilities across all three Services from various regions. These patient encounters were priced with the National average CMAC pricing scale as well as the current all-inclusive methodology. The average of both pricing schemes found the totals to be within a ten-dollar range of each other. Thus, we anticipate billing at approximately the same aggregate level. The benefit of the change in methodology is that each bill will be much more appropriate for the actual services provided to the patient and will be itemized in the manner to which the health insurance industry is accustomed. Therefore, although it is not based on actual DoD costs (because our cost accounting systems do not have patient level specification), we believe adoption of the CMAC rates is more representative of actual costs specific to the services provided to a patient than is our current aggregated clinic visit rate.

The format of line-item charges will more closely resemble that currently used by facilities of the Department of Veteran's Affairs. Under this rule, DoD facilities will bill for the majority of outpatient care utilizing the Health Care Common Procedure Coding System with individual charges associated with these codes. Third party payers who receive claims from both entities, will now see greater similarity between the DoD and VA. However, the rates and business rules utilized by these two agencies will vary, with the VA's usual and customary rate based on independent calculation, and the DoD's rate based on the long-established CHAMPUS methodology.

This approach is also consistent with the newly enacted 10 U.S.C. 1079b, which reaffirms the authority of the Secretary of Defense to ''implement procedures under which a military medical treatment facility may charge civilians who are not covered beneficiaries (or their insurers) fees representing the costs, as determined by the Secretary, of trauma and other

medical care provided to such civilians.'' It is the Secretary's determination that the CHAMPUS payment rates best represent the costs of providing care to all patients in Military Treatment Facilities.

Rulemaking Procedures

We have reviewed this proposed rule in accordance with the provisions of Executive Order 12866, the Congressional Review of Agency Rulemaking Act (5 U.S.C. 801–808), and the Regulatory Flexibility Act (5 U.S.C. 601–612).

This rule has been designated as significant rule and has been reviewed by the Office Management and Budget as required under the provisions of Executive Order 12866. It is not an economically significant action or a major rule, and it would not have a significant impact on a substantial number of small entities.

This rule does this rule affect matter addressed by the Unfunded Mandates Reform Act (Pub. L. 104–4) or Executive Order 13132 concerning Federalism. Also, this proposed rule does not involve new information collection requirements under the Paperwork Reduction Act (44 U.S.C. chapter 35). This proposed rule will align DoD closer to civilian industry practices for health care billing and collections; it will have no significant economic or regulatory impact on any entity.

This is a proposed rule. Public comments are invited.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance.

For reasons set forth in the preamble, the Department of Defense proposes to amend 32 CFR Part 220 as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE CHARGES FOR HEALTHCARE SERVICES

1. The authority citation for 32 CFR part 220 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095.

2. Section 220.1 is revised to read as follows:

§ 220.1 Purpose and applicability.

(a) This part implements the provisions of 10 U.S.C. 1095, 1097b(b), and 1079b. In general, 10 U.S.C. 1095 establishes the statutory obligation of third party payers to reimburse the United States the reasonable charges of healthcare services provided by facilities of the Uniformed Services to covered beneficiaries who are also covered by a third party payer's plan. Section 1097b(b) elaborates on the methods for computation of reasonable charges. Section 1079b addresses charges for civilian patients who are not normally beneficiaries of the Military Health System. This part establishes the Department of Defense interpretations and requirements applicable to all healthcare services subject to 10 U.S.C. 1095, 1097b(b), and 1079b.

(b) This part applies to all facilities of the Uniformed Services; the Department of Transportation administers this part with respect to facilities of the Coast Guard, not the Department of Defense.

(c) This part applies to pathology services provided by the Armed Forces Institute of Pathology. However, in lieu of the rules and procedures otherwise applicable under this part, the Assistant Secretary of Defense (Health Affairs) may establish special rules and procedures under the authority of 10 U.S.C. 176 and 177 in relation to cooperative enterprises between the Armed Forces Institute of Pathology and the American Registry of Pathology.

3. Section 220.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 220.2 Statutory obligation of third party payer to pay.

(a) *Basic rule.* Pursuant to 10 U.S.C. 1095(a)(1), a third party payer has an obligation to pay the United States the reasonable charges for healthcare services provided in or through any facility of the Uniformed Services to a covered beneficiary who is also a beneficiary under the third party payer's plan. The obligation to pay is to the extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

(b) *Application of cost shares.* If the third party payer's plan includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount the United States may collect from the third party payer is the reasonable charge for the care provided less the appropriate deductible or copayment amount.

* * * * *

4. Section 220.4 is amended by revising paragraph (c)(2)(iii) to read as follows:

§ 220.4 Reasonable terms and conditions of health plan permissible.

* * * * *

(c) * * *

(2) * * *

(iii) Such provisions are not permissible if they would not affect a third party payer's obligation under this part. For example, concurrent review of an inpatient hospitalization would generally not affect the third party payer's obligation because of the DRG-based, per-admission basis for calculating reasonable charges under § 220.8(a) (except in long stay outlier cases, noted in § 220.8(a)(4)).

* * * * *

5. Section 220.8 is amended by revising the section heading and paragraphs (a), (b), (c), (e), (f), (h), (i), and (j) and by removing paragraphs (k) and (l) to read as follows:

§ 220.8 Reasonable charges.

(a) *In general.* (1) Section 1095(f) and section 1097b(b) both address the issue of computation of rates. Between them, the effect is to authorize the calculation of all third party payer collections on the basis of reasonable charges and the computation of reasonable charges on the basis of per diem rates, all-inclusive per-visit rates, diagnosis related groups rates, rates used by the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) program to reimburse authorized providers, or any other method the Assistant Secretary of Defense (Health Affairs) considers appropriate and establishes in this part. Such rates, representative of costs, are also endorsed by section 1079b(a).

(2) The general rule is that reasonable charges under this part are based on the rates used by CHAMPUS under 32 CFR 199.14 to reimburse authorized providers. There are some exceptions to this general rule, as outlined in this section.

(b) *Inpatient hospital and professional services on or after January 1, 2003.* Reasonable charges for inpatient hospital services provided on or after January 1, 2003, are based on the CHAMPUS Diagnosis Related Group (DRG) payment system rates under 32 CFR 199.14(a)(1). Certain adjustments are made to reflect differences between the CHAMPUS payment system and the Third Party Collection Program billing system. Among these are to include in the inpatient hospital service charges adjustments relating to direct medical education and capital costs (which in the CHAMPUS system are handled as annual pass through payments). Additional adjustments are made for long stay outlier cases. Like the CHAMPUS system, inpatient professional services are not included in the inpatient hospital services charges, but are billed separately in accordance with paragraph (e) of this section.

(c) *Inpatient hospital and inpatient professional services before January 1, 2003.* (1) *In general.* Prior to January 1,

2003, the computation of reasonable charges for inpatient hospital and professional services is reasonable costs based on diagnosis related groups (DRGs). Costs shall be based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The average charge per case shall be published annually as an inpatient standardized amount. A relative weight for each DRG shall be the same as the DRG weights published annually for hospital reimbursement rates under CHAMPUS pursuant to 32 CFR 199.14(a)(1).

(2) *Standardized amount.* The standardized amount is determined by dividing the total costs of all inpatient care in all military treatment facilities by the total number of discharges. This produces a single national standardized amount. The Department of Defense is authorized, but not required by this part, to calculate three standardized amounts, one for large urban, other urban/rural, and overseas area, utilizing the same distinctions in identifying the first two areas as is used for CHAMPUS under 32 CFR 199.14(a)(1). Using this applicable standardized amount, the Department of Defense may make adjustments for area wage rates and indirect medical education costs (as identified in paragraph (c)(4) of this section), producing for each inpatient facility of the Uniformed Services a facility-specific ''adjusted standardized amount'' (ASA).

(3) *DRG relative weights.* Costs for each DRG will be determined by multiplying the standardized amount per discharge by the DRG relative weight. For this purpose, the DRG relative weights used for CHAMPUS pursuant to 32 CFR 199.14(a)(1) shall be used.

(4) *Adjustments for outliers, area wages, and indirect medical education.* The Department of Defense may, but is not required by this part, to adjust charge determinations in particular cases for length-of-stay outliers (long stay and short stay), cost outliers, area wage rates, and indirect medical education. If any such adjustments are used, the method shall be comparable to that used for CHAMPUS hospital reimbursements pursuant to 32 CFR 199.14(a)(1)(iii)(E), and the calculation of the standardized amount under paragraph (a)(2) of this section will reflect that such adjustments will be used.

(5) *Identification of professional and hospital charges.* For purposes of billing third party payers other than automobile liability and no-fault insurance carriers, inpatient billings are subdivided into two categories:

(i) Hospital charges (which refers to routine service charges associated with the hospital stay and ancillary charges).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

* * * * *

(e) *Reasonable charges for professional services.* The CHAMPUS Maximum Allowable Charge (CMAC) rate table, established under 32 CFR 199.14(h), is used for determining the appropriate charge for professional services in an itemized format, based on Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS) methodology. This applies to outpatient professional charges only prior to January 1, 2003, and to all professional charges, both inpatient and outpatient, after January 1, 2003.

(f) *Miscellaneous Healthcare services.* Some special services are provided by or through facilities of the Uniformed Services for which reasonable charges are computed based on reasonable costs. Those services are the following:

(1) The charge for ambulance services is based on the full costs of operating the ambulance service.

(2) Charges for care in the Burn Center at Brooke Army Medical Center are based on a per diem rate for the full costs of these services until October 1, 2002, at which time charges will move over to DRG basis as stated.

(3) Charges for dental services (including oral diagnosis and prevention, periodontics, prosthodontics (fixed and removable), implantology, oral surgery, orthodontics, pediatric dentistry and endodontics) will be based on a full cost of the dental services.

(4) With respect to services provided prior to January 1, 2003, reasonable charges for anesthesia services will be based on an average DoD cost of service in all Military Treatment Facilities. With respect to services provided on or after January 1, 2003, reasonable charges for anesthesia services will be based on an average cost per minute of service in all Military Treatment Facilities.

(5) The charge for immunizations, allergin extracts, allergic condition tests, and the administration of certain medications when these services are provided in a separate immunizations or shot clinic, are based on CHAMPUS prevailing rates in cases in which such rates are available, and in cases in which such rates are not available, on the average full cost of these services, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each immunization, injection or medication administered.

(6) The charges for pharmacy, durable medical equipment and supplies are based on CHAMPUS prevailing rates in cases in which such rates are available, and in cases in which such rates are not available, on the average full cost of these items, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each item provided.

(7) Charges for aeromedical evacuation will be based on the full cost of the aeromedical evacuation services.

* * * * *

(h) *Special rule for TRICARE Resource Sharing Agreements.* Services provided in facilities of the Uniformed Services in whole or in part through personnel or other resources supplied under a TRICARE Resource Sharing Agreement under 32 CFR 199.17(h) are considered for purposes of this part as services provided by the facility of the Uniformed Services. Thus, third party payers will receive a claim for such services in the same manner and for the same charges as any similar services provided by a facility of the Uniformed Services.

(i) *Alternative determination of reasonable charges.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar aggregate groups of services that is less than the charges prescribed under this section may, with the agreement of the facility of the Uniformed Services (or other authorized representatives of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate for those services. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan. This paragraph does not apply to cases covered by § 220.11.

(j) *Exception authority for extraordinary circumstances.* The Assistant Secretary of Defense (Health Affairs) may authorize exceptions to this section, not inconsistent with law, based on extraordinary circumstances.

6. Section 220.10 is amended by revising paragraph (c)(1) to read as follows:

§ 220.10. Special rules for Medicare supplemental plans.

* * * * *

(c) *Charges for health care services other than inpatient deductible amount.*

(1) The Assistant Secretary of Defense (Health Affairs) may establish special charge amounts for Medicare supplemental plans to collect reasonable charges for inpatient and outpatient copayments and other services covered by the Medicare supplemental plan. Any such schedule of charge amounts shall:

* * * * *

7. Section 220.12 is amended by revising paragraph (a)(1) to read as follows:

§ 220.12. Special rules for preferred provider organizations.

(a) *Statutory requirement.* (1) Pursuant to the general duty of third party payers to pay under 10 U.S.C. 1095(a)(1) and the definitions of 10 U.S.C. 1095(h), a plan with a preferred provider organization (PPO) provision or option generally has an obligation to pay the United States the reasonable charges for healthcare services provided through any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under the plan.

* * * * *

8. Section 220.13 is amended by revising paragraph (a) to read as follows:

§ 220.13 Special rules for workers' compensation programs.

(a) *Basic rule.* Pursuant to the general duty of third party payers under 10 U.S.C. 1095(a)(1) and the definitions of 10 U.S.C. 1095(h), a workers' compensation program or plan generally has an obligation to pay the United States the reasonable charges for healthcare services provided in or through any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under a workers' compensation program due to an employment related injury, illness, or disease. Except to the extent modified or supplemented by this section, all provisions of this part are applicable to any workers' compensation program or plan in the same manner as they are applicable to any other third party payer.

* * * * *

9. Section 220.14 is amended by revising the definitions *Covered beneficiaries* and *Third party payer* to read as follows:

§ 220.14 Definitions.

* * * * *

Covered beneficiaries. Covered beneficiaries are all healthcare beneficiaries under chapter 55 of title 10, United States Code, except members of the Uniformed Services on active duty (as specified in 10 U.S.C. 1074(a)). However, for purposes of § 220.11, such members of the Uniformed Services are included as covered beneficiaries.

* * * * *

Third party payer. A third party payer is any entity that provides an insurance, medical service, or health plan by contract or agreement. It includes but is not limited to:

(1) State and local governments that provide such plans other than Medicaid.

(2) Insurance underwriters or carriers.

(3) Private employers or employer groups offering self-insured or partially self-insured medical service or health plans.

(4) Automobile liability insurance underwriter or carrier.

(5) No fault insurance underwriter or carrier.

(6) Workers' compensation program or plan sponsor, underwriter, carrier, or self-insurer.

(7) Any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for healthcare services or products.

* * * * *

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7539 Filed 3–28–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–013]

RIN 2115–AA97

Safety Zone: Groton Long Point Yacht Club Fireworks Display, Groton, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Groton Long Point Yacht Club Fireworks Display, off Groton Long Point, CT. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Long Island Sound in the vicinity of Groton Long Point, Groton, CT.

DATES: Comments and related material must reach the Coast Guard on or before April 29, 2002.

ADDRESSES: You may mail comments and related material to Marine Events, Coast Guard Group/Marine Safety Office Long Island Sound, Command Center, 120 Woodward Ave., New Haven, CT 06512. Coast Guard Group/Marine Safety Office Long Island Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM2 Ryan Peebles, Group Operations Petty Officer, Coast Guard Group/MSO Long Island Sound (203)468–4408.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to Coast Guard Group/MSO Long Island Sound at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a temporary safety zone for the Groton Long Point Yacht Club Fireworks Display off Groton Long Point in Long Island Sound. The safety zone encompasses all waters of Long Island Sound within a 600-foot radius of approximate position, 41°18′05″ N, 072°02′08″ W (NAD 1983). The proposed safety zone is intended to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety

zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels.

Discussion of Proposed Rule

The proposed safety zone is for the Groton Long Point Yacht Club Fireworks Display held off Groton Long Point, Groton, CT. This event will be held on July 20, 2002. In the event of inclement weather, the event will be held on July 21, 2001. The proposed safety zone will be in effect from 9:15 p.m. until 10:30 p.m. on the date of the event. The proposed safety zone encompasses all waters of Long Island Sound within a 600-foot radius of approximate position 41°18′05″ N, 071°02′08″ W (NAD 1983).

Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts. Marine traffic will be allowed to transit around the safety zone at all times. Vessels will not be precluded from mooring at or getting underway from recreational or commercial piers in the vicinity of the zone. No vessel may enter the safety zone without permission from the Captain of the Port, Long Island Sound.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory planning and review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed safety zone would temporarily close a portion of Long Island Sound to vessel traffic. However, the impact of this regulation is expected to be minimal for the following reasons: the event is of limited duration; vessels are not precluded from getting underway, or mooring at, public or private facilities in the vicinity of the event; advance advisories will be made to the maritime community; and marine traffic may still transit around the zone during the event.

The size of this safety zone was determined using National Fire Protection Association standards and the Captain of the Port Long Island Sound Standing Orders for 6-inch mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Long Island Sound during the time this zone is activated. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: the event is of limited duration; vessels are not precluded from getting underway, or mooring at, public or private facilities in the vicinity of the event; advance advisories will be made to the maritime community; and marine traffic may still transit around the zone during the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Boatswain's Mate Second Class (BM2) Ryan Peebles, Operations Petty Officer, Coast Guard Group/MSO Long Island Sound (203) 468–4408.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes a safety zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 9:15 p.m. July 20, 2002 through 10:30 p.m. July 21, 2002, add temporary § 165.T01–013 to read as follows:

§ 165.T01–013 Safety Zone: Groton Long Point Yacht Club Fireworks Display, Groton, CT.

(a) *Location.* The following area is a safety zone: All waters off Groton Long Point in Long Island Sound within a 600-foot radius of approximate position 41°18′05″ N, 072°02′08″ W (NAD 1983).

(b) *Enforcement period.* This safety zone will be enforced from 9:15 p.m. to 10:30 p.m. July 20, 2002, but in case the event is postponed because of inclement weather, the zone will be enforced instead during the same hours on July 21, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, Long Island Sound.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 12, 2002.

J.J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 02–7572 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD06

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to postpone the implementation of existing snowmobile regulations in Yellowstone National Park, the John D. Rockefeller, Jr., Memorial Parkway, and Grand Teton National Park for one year. This proposal is in conjunction with the Supplemental Environmental Impact Statement (SEIS) being prepared for all three NPS areas. This additional time is needed because the NPS has not had sufficient time to plan for and implement the NPS-managed, mass-transit, snowcoach-only system outlined in the existing Winter Use Plan and to complete the Supplemental Environmental Impact Statement.

DATES: Written comments will be accepted through May 28, 2002.

ADDRESSES: Comments may be sent to Robert J. Maguire, Winter Use Regulations, National Park Service, P.O. Box 124, Moose, WY 83012. Fax: (307) 739–3504. Email: *Grte_winter_regs@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW, Room 7413, Washington, DC 20240. Phone: (202) 208–4206. Fax: (202) 208–6756. Email: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1990 a Winter Use Plan was completed for Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway). In 1994 the National Park Service (NPS) and U.S. Forest Service (USFS) staff began work on a coordinated interagency report on Winter Visitor Use Management. This effort was in response to an earlier than expected increase in winter use. The 1990 Winter Use Plan projected 143,000 visitors for the year 2000. Winter visitors to YNP and GTNP in 1992–93 exceeded this estimate. Total visitors to YNP and GTNP in that year were, respectively, 142,744 and 128,159.

In 1994 the Greater Yellowstone Coordinating Committee (GYCC), composed of National Park Service Superintendents and National Forest Supervisors within the Greater Yellowstone Area (GYA), recognized the trend toward increasing winter use and identified concerns relating that use. The GYCC chartered an interagency study team to collect information relative to these concerns and perform an analysis of winter use in the GYA. This analysis, Winter Visitor Use Management: a Multi-agency Assessment, was drafted in 1997 and approved by the GYCC for final publication in 1999. The assessment identifies desired conditions for the GYA, current areas of conflict, issues and concerns, and possible ways to address them. The final document considered and incorporated many comments from the general public, interest groups, and local and state governments surrounding public lands in the GYA.

In May 1997, the Fund for Animals filed a suit against the National Park Service (NPS). The suit alleged that the NPS had failed to conduct adequate analysis under the National Environmental Policy Act (NEPA) when developing its winter use plan for the areas, failed to consult with the U.S. Fish and Wildlife Service on the effects of winter use on threatened and endangered species, and failed to evaluate the effects of trail grooming on wildlife and other park resources. In October 1997, the Department of Interior (DOI) and the plaintiffs reached a settlement agreement. Under the agreement, the NPS agreed, in part, to prepare an environmental impact statement (EIS) for new winter use plans for the parks and the parkway. This settlement provision was satisfied with publication and distribution of the final environmental impact statement (FEIS) on October 10, 2000. A record of decision (ROD) was signed by Intermountain Regional Director Karen Wade on November 22, 2000, and subsequently distributed to interested and affected parties. The ROD selected FEIS Alternative G, which eliminates both snowmobile and snowplane use from the parks by the winter of 2003–2004, and provides access via an NPS-managed, mass-transit snowcoach system. The decision was based on a finding that existing snowmobile and snowplane use impairs park resources and values, thus violating the statutory mandate of the NPS.

Implementing aspects of this decision relating to designation of routes available for over-snow motorized access required a rule change for each park unit in question. Following publication of a proposed rule and the subsequent public comment period, a final rule was published in the **Federal Register** on January 22, 2001. The rule became effective on April 22, 2001. Full implementation of the plan and the rule changes do not occur until the winter of 2003–2004.

The Secretary of the Interior and others in the Department of the Interior and the National Park Service were named as defendants in a lawsuit brought by the International Snowmobile Manufacturers Association and several groups and individuals. The State of Wyoming intervened on behalf of the plaintiffs. The lawsuit asked for the decision, as reflected in the ROD and final rule, to be set aside. The lawsuit alleged that NPS failed to give legally mandated consideration to all of the alternatives, made political decisions outside the public process and contradictory to evidence and data, failed to give the public appropriate notice and participation, failed to adequately consider and use the proposals and expertise of the Cooperating Agencies, failed to properly interpret and implement the Parks' purpose, discriminated against disabled visitors, and improperly adopted implementing regulations. A settlement was reached on June 29, 2001 and, through its terms, NPS is acting as lead agency to prepare a Supplemental Environmental Impact Statement (SEIS). In accordance with the settlement, the SEIS will incorporate ''any significant new or additional information or data submitted with respect to a winter use plan.'' Additionally, the NPS will consider new information and data submitted regarding new snowmobile technologies. A Notice of Intent to prepare a Supplemental Environmental Impact Statement was published in the **Federal Register** on July 27, 2001 (66 FR 39197).

As a term of the settlement, the State of Wyoming was designated as a ''cooperating agency'' for the development of the Supplemental EIS. Subsequent to the settlement, all other agencies that signed cooperating agency agreements during the earlier EIS process agreed to be cooperating agencies for the SEIS. These agencies are: the U.S. Forest Service, the States of Montana and Idaho, Fremont County Idaho, Gallatin and Park Counties in Montana, and Park and Teton Counties in Wyoming. In addition, the Environmental Protection Agency (EPA) was invited to be a new cooperating agency in this effort.

The NPS determined that the preparation of a Supplemental EIS will further the purposes of the National Environmental Policy Act, which includes soliciting more public comments on the earlier decision and alternatives and considering new information not available at the time of the earlier decision. The purpose of this rule is to postpone the implementation of existing snowmobile regulations in Yellowstone National Park, the John D. Rockefeller, Jr., Memorial Parkway, and Grand Teton National Park for one year because the NPS has not had sufficient time to plan for and implement the NPS-managed, mass-transit, snowcoach-only system outlined in the existing Winter Use Plan and to complete the Supplemental EIS.

The following proposed rule changes are common to all three parks. The use of snowmobiles will be extended until the end of the 2003–2004 winter use season. The implementation of public use limits set to go into effect in the 2002–2003 winter use season will be delayed until the winter use season 2003–2004. The designated routes and hours of operation for snowmobiles during the winter use season of 2002–2003 will also be used for the 2003–2004 winter use season.

In Yellowstone National Park the requirement that snowmobiles be accompanied by an NPS permitted guide will be implemented during the 2003–2004 winter use season. The use of snowmobiles on the frozen surface of Jackson Lake in Grand Teton National Park will be permitted until the end of the 2002–2003 winter use season.

Additional regulations concerning licensing, hours of operation and snowplane use were effective for the winter use season 2001–2002. The existing regulations prohibit the use of snowplanes in Grand Teton National Park after the winter season of 2001–2002. Those provisions are not addressed in, nor affected by, the supplemental EIS process and therefore it is appropriate they take affect as they appear in the existing regulations. No public comment is being solicited on these provisions.

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

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

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

This rule would delay any adverse economic impact from the existing rule for one year, there may be economic benefits resulting from the proposed extension. In the Draft Supplemental Environmental Impact Statement (DSEIS), the NPS estimated that in 2003–2004, the economic outputs and employment impacts of implementing actions under this rule are: in the five-county, greater Yellowstone area, an estimated loss of 15.9 to 21.1 million dollars; in the three-state area surrounding the parks, a variance of a possible 18.4 million dollar loss to a 7.0 million dollar increase. Increased winter visitation from new visitors to the park under existing regulations could substantially offset estimated losses and employment reductions from current visitors.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions

under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule will only postpone the prohibition on snowmobiles for one year within specific national parks. No grants or other forms of monetary supplements are involved.

(4) This rule may raise novel legal or policy issues.

The issue of prohibiting snowmobiles or allowing their continued use has generated local as well as national interest on the subject in the greater Yellowstone area. Previously, tens of thousands of public comments were received and analyzed in the development of the FEIS, Winter Use Management Plan, and existing regulations.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

After considering the economic impacts of the delay rule on small entities, NPS concludes the delay rule will mitigate the impacts on small businesses during the winters of 2002–2003 and 2003–2004. The NPS projects higher total levels of revenue for firms providing unguided and guided snowmobile rentals and snowcoach tours in those winters.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

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

This rule would delay any adverse economic impact from the existing rule for one year, there may be economic benefits resulting from the proposed extension. In the Draft Supplemental Environmental Impact Statement (DSEIS), the NPS estimated that in 2003–2004, the economic outputs and employment impacts of implementing actions under this rule are: in the five-county, greater Yellowstone area, an estimated loss of 15.9 to 21.1 million dollars; in the three-state area surrounding the parks, a variance of a possible 18.4 million dollar loss to a 7.0 million dollar increase. Increased winter visitation from new visitors to the park under existing regulations could substantially offset estimated losses and employment reductions from current visitors.

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

Delaying the implementation of current snowmobile regulations for one year will have little effect on costs or prices for consumers, individual industries or any government agency.

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

This rulemaking has no effect on methods of manufacturing or production and specifically influences only the Wyoming region, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

This rule postpones the implementation of existing snowmobile regulations for one year. It imposes no other requirements on other agencies, governments, or the private sector.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

This rule proposes to delay the implementation of existing snowmobile regulation for one year. Private property within the boundaries of those parks will still be afforded access during the winter use season. No other property is affected.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed rule effects use by the public of NPS administered lands. It has no outside effects on other areas and only address a portion of the use within parks.

Civil Justice Reform (E.O. 12988)

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

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

In 2000, NPS completed a Final Environmental Impact Statement and issued a Record of Decision. That Record of Decision was the basis for the existing rule. A Draft Supplemental Environmental Impact Statement (DSEIS) has been prepared to reconsider the Record of Decision. A copy of the FEIS or DSEIS is available by contacting the Superintendent of Yellowstone or Grand Teton National Parks or on the World Wide Web at *www.nps.gov/grte/winteruse/intro.htm.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Numerous tribes surrounding the greater Yellowstone area were consulted in the development of the Winter Use Plan and FEIS. The main concerns expressed by the tribes were the affects on wildlife by snowmobiles. This rule has no effect on tribal lands or trusts.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example § 7.22 Grand Teton National Park.) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also email the comments to this address: *Exsec@ios.doi.gov*.

Drafting Information: The principal contributors to this proposed rule are Robert J. Maguire, North District Ranger, Grand Teton National Park; Kym A. Hall, NPS Regulations Program Manager; Debra Hecox, Attorney-Advisor, Solicitor's Office; Bob Rossman, Outdoor Recreation Planner, Grand Teton National Park; Sarah Creachbaum, Outdoor Recreation Planner, Grand Teton National Park; and John Sacklin, Supervisory Planner, Yellowstone National Park.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail your comments to Robert J. Maguire, Winter Use Regulations, National Park Service, P.O. Box 124, Moose, WY 83012. You may also comment via the Internet to *grte_winter_regs@nps.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Finally, you may hand deliver comments to Robert J. Maguire, Grand Teton National Park, North District Office, Colter Bay, Wyoming. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

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

We propose to amend 36 CFR Part 7 as set forth below:

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

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

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

2. In § 7.13, remove and reserve paragraph (l)(2), revise the introductory text of paragraph (l)(5), revise the introductory text of paragraph (l)(7), revise paragraph (l)(11)(i), and revise paragraph (l)(11)(viii) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(2) [Removed and Reserved]

* * * * *

(l)(5) *What routes are designated for snowmobile use in the park during the winter seasons of 2002–2003 and 2003–2004?* During the winter use seasons of 2002–2003 and 2003–2004, the following routes are designated for snowmobile use:

* * * * *

(l)(7) *What limits are established for the number of snowmobiles permitted to use the park each day?* For the winter use season 2003–2004, the numbers of snowmobiles allowed to use the park each day are listed in the following table:

* * * * *

(l)(11)(i) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9:00 p.m. and 8:00 a.m. except by authorization.

* * * * *

(l)(11)(viii) During the winter season of 2003–2004, snowmobiles must be accompanied by an NPS permitted guide and may not travel in groups of more than 11 snowmobiles.

* * * * *

3. In § 7.21, revise paragraph (a)(1), remove and reserve paragraph (a)(2), revise paragraph (a)(4) introductory text, revise paragraph (a)(5) introductory text, and revise paragraph (a)(9)(vi) to read as follows:

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

* * * * *

(a)(1) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance within the public use limits and operating conditions established in this section until the end of the winter use season of 2003–2004 at which time snowmobile use in the Parkway is prohibited except for essential administrative use and in emergency situations as determined by the Superintendent.

(a)(2) [Removed and Reserved]

* * * * *

(a)(4) *What routes are designated for snowmobile use in the Parkway in the winter use seasons of 2002–2003 and 2003–2004?* During the winter use seasons of 2002–2003 and 2003–2004, the following routes are designated for snowmobile use:

* * * * *

(a)(5) *What limits are established for the number of snowmobiles permitted to use the Parkway each day?* For the winter use season 2003–2004, the numbers of snowmobiles allowed to use the Parkway each day are listed in the following table:

* * * * *

(a)(9)(vi) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9:00 p.m. and 8:00 a.m. except by authorization.

* * * * *

4. In § 7.22, revise paragraph (g)(1), remove and reserve paragraphs (g)(2) and (g)(3), revise paragraph (g)(4), revise paragraph (g)(6), and revise paragraph (g)(7)(vi) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) May I operate a snowmobile in Grand Teton National Park? During the winter use seasons of 2002–2003 and 2003–2004, you may operate a snowmobile on the routes designated in paragraph (g)(6) of this section in compliance with public use limits and operating standards established by the Superintendent. Effective the winter use season of 2004–2005, snowmobile use will be restricted to the routes and purposes in paragraph (g)(10), (11), (12), and (13) of this section. All other snowmobile use is prohibited, except for essential administrative use and in emergency situations as determined by the Superintendent.

(g)(2) [Removed and Reserved]

(g)(3) [Removed and Reserved]

(g)(4) Effective until the end of the winter use season 2002–2003, the following water surface is designated for snowmobile use: The frozen surface of Jackson Lake.

* * * * *

(g)(6) *What routes and limits are designated for snowmobile use in the park during the winter use seasons of 2002–2003 and 2003–2004?* For the winter use seasons of 2002–2003 and 2003–2004, the Continental Divide Snowmobile Trail along U.S. 26/287

from Moran to the eastern park boundary and along U.S. 89/287 from Moran to the north park boundary is designated for snowmobile use. The Superintendent may open or close this route after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety. During the winter use season of 2003–2004 a maximum of 25 snowmobiles are allowed to use this route each day.

* * * * *

(g)(7)(vi) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9:00 p.m. and 8:00 a.m.

* * * * *

Dated: March 20, 2002.

Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 02–7707 Filed 3–28–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

42 CFR Part 36

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

AGENCY: Indian Health Service, DHHS.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of Health and Human Services (DHHS) published a proposed rule in the **Federal Register** (67 FR 6998, February 14, 2002) to implement Title V of the Tribal Self-Governance Amendments of 2000, Pub. L. 106–260 (the Act). The proposed rule was negotiated among representatives of Self-Governance and non-Self-Governance Tribes and the DHHS and includes provisions governing how DHHS/Indian Health Service (IHS) carries out its responsibility to Indian Tribes under the Act and how Indian Tribes carry out their responsibilities under the Act. As required by section 517(b) of the Act, the DHHS developed the proposed rule with active Tribal participation of Indian Tribes, inter-Tribal consortia, Tribal organizations and individual Tribal members, using the guidance of the Negotiated Rulemaking Act, 5 U.S.C. 561 et seq.

The proposed rule was published in the **Federal Register** with a 60-day public comment period. Any interested party was invited to provide comment. To address comments received, a meeting is scheduled for the location and date provided below. As a result of the meeting, the Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance (the Committee) may recommend changes in the proposed rule in response to comments received.

DATES: The Committee will meet as follows: April 15, 1:00 p.m.—6:00 p.m.,; April 16–17, 8:00 a.m.—6:00 p.m.; April 18, 8:30 a.m.—1:00 p.m., Bethesda, MD.

ADDRESSES: The location of the meeting is: Bethesda, MD—Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20817.

FOR FURTHER INFORMATION CONTACT: Paula Williams , Director, Office of Tribal Self-Governance, Indian Health Service, 801 Thompson Avenue, Suite 240, Rockville, MD 20852, Telephone 301–443–7821. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The meeting will be 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 meeting to the extent time permits. A summary of the Committee meeting will be available for public inspection and copying ten days following the meeting at the address listed in the preceding paragraph.

Dated: March 25, 2002.

Duane L. Jeanotte,

Acting Director.

[FR Doc. 02–7527 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 483 and 488

[CMS–2131–P]

RIN 0938–AL04

Medicare and Medicaid Programs; Requirements for Paid Feeding Assistants in Long Term Care Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide States the flexibility to allow long term care facilities to use paid feeding assistants to supplement the services of certified nurse aides if their use is consistent with State law. If facilities choose this option, feeding assistants must complete a specified training program. This proposed rule would improve the quality of care in long term care facilities by ensuring that residents are assisted with eating and drinking as needed.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 28, 2002.

ADDRESSES: In commenting, please refer to file code CMS–2131–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Mail written comments (one original and three copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2131–P, PO Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nola Petrovich, (410) 786–4671.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–14–03 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD, on Monday through

Friday of each week from 8:30 a.m. to 4 p.m. (Phone (410) 786–7201).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Legislation

Sections 1819(a) through (e) and 1919(a) through (e) of the Social Security Act (the Act) set forth the requirements that long term care facilities must meet to participate in the Medicare and Medicaid programs, respectively. Sections 1819(f)(2) and 1919(f)(2) of the Act contain requirements for nurse aide training and competency evaluation programs (NATCEP). Sections 1819(g) and 1919(g) of the Act contain the criteria that we use to assess a facility's compliance with the requirements. These statutory provisions were mandated by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, enacted December 22, 1987). The requirements for long term care facilities are codified at 42 CFR part 483, subpart B; the nurse aide training and competency evaluation program requirements are codified at 42 CFR part 483, subpart D; and the survey, certification and enforcement procedures are codified at 42 CFR part 488, subparts E and F. Sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act and regulations at § 483.75(e) define a nurse aide as any individual furnishing nursing or nursing-related services to residents in a facility, who is not a licensed health professional, a registered dietitian, or someone who volunteers to furnish services without pay. Sections 1819(f)(2) and 1919(f)(2) of the Act set forth the requirements for approval of a nurse aide training and competency evaluation program, but do not define ''nursing'' or ''nursing related'' skills. Section 483.152 of the regulations specifies nurse aide training requirements. These include, for example, basic nursing skills, personal care skills, communication and interpersonal skills, infection control, safety and emergency procedures, mental health and social service needs, residents' rights, care of cognitively impaired residents, and basic restorative services.

Current Program Experience

Currently, there is no provision in the regulations for the use of single-task workers, such as paid feeding assistants, in nursing homes. To ensure the safety of facility residents, we require that qualified nursing staff provide assistance with eating and drinking, although there is some question whether or not all residents need medical supervision. This group of personnel includes registered nurses, licensed practical nurses, and certified nurse aides who have completed 75 hours of training. However, volunteers, who are usually family members, may also feed residents, because the law and regulations exclude volunteers from the definition of certified nurse aide.

Nursing homes in many States report a continuing shortage of certified nurse aides. Nursing homes are finding it increasingly difficult to train and retain sufficient numbers of qualified nursing staff, especially certified nurse aides. Certified nurse aides perform the majority of resident care tasks. Other employers often pay similar wages for less physically and emotionally demanding jobs. This makes it harder for nursing homes to employ enough nursing staff to perform routine nursing care and to feed residents who need minimal help or just encouragement at mealtimes. Feeding residents is often a slow process and competes with more complex tasks, such as bathing, toileting, and dressing changes, as well as urgent medical care.

For many elderly nursing home residents, physical and psychological changes often interfere with eating ability and meal consumption. Residents may need assistance with feeding if they have, for example, cognitive impairment, impaired swallowing due to muscular weakness or paralysis, a tendency to aspirate or choke, poor teeth, ill-fitting dentures or partial plates, or poor muscular or neurological control of their arms or hands, as with Parkinson's disease.

Current Trends

Nursing homes are caring for an aging population that has more acute clinical conditions than in the past. The result is a higher percentage of nursing home residents who need higher levels of medical care, which takes more staff time and leaves less time for routine tasks, such as ensuring that residents eat their meals and drink enough fluids.

In addition, evidence suggests that there has been a recent increase in assisted living facilities that house many individuals with minimal medical needs who previously would have been cared for in nursing homes. Both of these trends have resulted in a frailer nursing home population than previously, with residents who are more dependent on nursing staff for basic needs, such as feeding and personal care. A critical shortage of certified nurse aides in many parts of the country has resulted in a need for staff who are specially trained to help residents eat at mealtimes, to supplement, not replace certified nurse aides.

Some residents only need encouragement or minimal assistance, which does not require medical training. Properly trained nonmedical personnel could provide this type of assistance. Nurse aides and other nursing staff receive training so that they are able to feed residents with all kinds of feeding problems. A higher level of training is required of nurse aides because they need to be able to deal with complicated feeding problems. However, when there is a nurse aide shortage, it is often the case that residents without complicated feeding problems receive little or no assistance at mealtimes with eating or drinking, while the nursing staff focuses on feeding residents with complicated problems. We believe there is a place in nursing homes for the use of feeding assistants who, after proper basic training in feeding techniques and working with the elderly, are able to feed residents who do not have complicated feeding problems. It is reasonable to require that feeding assistants receive a lower level of training than a nurse aide because feeding assistants would not handle complicated feeding cases. This would allow facilities, if they choose, to train other facility employees as feeding assistants so that available staff can feed residents at mealtimes.

Facility Staff Shortages

Because of the shortage of certified nurse aides and the increasingly complex medical needs of residents, facilities in some States have used paid

feeding assistants to supplement certified nurse aides to ensure that residents take in adequate food and fluids. Generally, feeding assistants used by these facilities are part-time workers, often retired individuals, or homemakers who are available for a few hours a day. They may also be older students who come into the facility between 1 and 2 hours either at the noon or evening meal. In other facilities, staff shortages are so acute that all nonmedical employees, including the administrator of the facility, are required to complete training and help feed residents at mealtimes. Training facility personnel for functions other than their primary position is known as cross-training. There is anecdotal evidence that cross-training of personnel increases coordination and continuity of care. It also contributes to increased morale and lower staff turnover.

There is no provision in Federal regulations for the employment of nursing home workers who perform only a single task without completing 75 hours of nurse aide training. Currently, residents must be fed by a registered nurse, licensed practical nurse, or a nurse aide who has completed 75 hours of medical training and who has been certified as competent to perform all nurse aide tasks. Volunteers may also feed residents. The reason for this existing policy is to ensure that residents who cannot, or do not, feed themselves are fed by nursing staff who have medical training. This is intended to protect residents from unskilled workers who might injure a resident by not recognizing serious medical complications associated with eating.

Wisconsin and North Dakota are two States in which nursing homes have had serious difficulty hiring enough certified nurse aides and have used feeding assistants as a supplement to certified nurse aides. Other States have expressed interest in using paid feeding assistants, including Ohio, Minnesota, Florida, California, and Illinois. Florida and Illinois have both passed laws that permit the use of single task workers in their States, but they have not yet implemented the provisions.

Wisconsin nursing homes have been using single-task feeding assistants for more than 7 years. Wisconsin uses a structured, formal program that requires a facility wanting to implement a feeding assistant program to submit an application for approval by the State. The classes are taught by a registered nurse, with a registered dietitian teaching the dietary elements of the program. A facility's approved program must include the following core areas: Interpersonal communication and social interaction; Basic nursing skills (including infection control); Personal care skills (assisting with eating, hydration); Basic restorative services (assistive devices for eating); Resident rights; and special problems associated with Dementia (specialized feeding and intake problems). Participants who complete the training must demonstrate skills and pass a written test with a score of 80 percent or better. Feeding assistants are used solely for feeding residents who have no feeding complications. They are permitted to feed residents only in the dining room and operate under the direction of a registered nurse or licensed practical nurse. Feeding assistants serve to supplement care delivered by certified nurse aides, which frees up more extensively trained aides to perform more complex resident care tasks.

North Dakota has used paid feeding assistants for a number of years and has a slightly less formal program than that of Wisconsin. The residents to be fed are selected by the dietary and nursing staff. If a facility has a nurse aide training program, the training coordinator and dietitian work together to train new feeding assistants individually. After training and orientation, a new feeding assistant is assigned to one resident who needs minimal assistance. As the assistant gains skill and confidence, he or she is assigned to more residents at a meal or to a resident who requires a higher level of skill to feed. Typically, feeding assistants work only about 1½ hours per day, providing assistance at either the noon or evening meal.

Conclusion

We are committed to ensuring that long term care residents receive the best possible care. We recognize that a shortage of certified nurse aides adversely affects resident care and prevents many residents from receiving adequate help with eating and drinking. Further, we are persuaded by the experience of States that have used paid feeding assistants, that proper training and medical direction of these feeding assistants minimizes the risk to residents, while providing substantial benefits to residents. After thoroughly considering this issue, we believe that the benefits to residents outweigh the potential risks and so we are taking steps to resolve the issue by publishing this proposed rule. We believe that a policy change to allow the use of feeding assistants can be accommodated under existing statute. There is nothing in the statute governing requirements for long term care facilities (sections 1819 and 1919 of the Act) that would preclude the use of these workers and we believe that there is no conflict with other statutory requirements.

II. Provisions of the Proposed Regulations

We would provide States the flexibility to allow a facility the option to use paid feeding assistants to help residents with eating and drinking at mealtimes. In new § 483.35(h), we would specify that if a facility uses paid feeding assistants, the feeding assistants must complete a State-approved training course that meets minimum requirements. The proposed course requirements are listed in § 483.160 and would include only non-nursing-related services and items that are currently part of the nurse aide training requirements. In addition to training in proper feeding techniques and how to assist residents with eating and drinking, we would include in the training other basic skills necessary to work with elderly and disabled nursing home residents. These include communication and interpersonal skills; appropriate responses to resident behavior; safety and emergency procedures, including the Heimlich Maneuver; infection control; resident rights; and recognizing changes in patients that are inconsistent with their normal behavior, and the importance of reporting those changes to the supervisor. Some States may want to include other requirements in their training, for example, the use of assistive devices for the unique needs of the cognitively impaired. We are not, however, including these other requirements. We anticipate that this training could easily be implemented in any facility with an approved nurse aide training program because the requirements are not new. We note that these requirements are the minimum and States and facilities must use these as a baseline, but may add any others that they believe are appropriate to structure a feeding assistance program that meets their needs.

We would require that each facility maintain a record of individuals it uses as feeding assistants who have successfully completed the feeding assistance training. In keeping with other similar requirements, we would require States to require facilities to report to the States any incidents of feeding assistants who have been found to neglect or abuse a resident, or misappropriate a resident's property. The States must maintain records of all reported incidents. States are not required to maintain a formal registry, as required for nurse aides, but the intent is similar.

The facility may use paid feeding assistants to feed residents who do not have a clinical condition that would require the training of a nurse or nurse aide. It is important for the professional nursing staff in the facility to identify residents who need help eating and drinking and those who can be fed by feeding assistants. We believe that this can be established by the comprehensive assessment (§ 483.20). Often, residents need help on some days and not on others. This means that the nurse in charge may need to make feeding decisions on a daily basis. Nurses or certified nurse aides would continue to feed residents with clinical conditions that require nursing training, including for example, recurrent lung aspirations, difficulty swallowing, or those on feeding tubes or parenteral/IV feedings. All feeding assistants must work under the direct supervision of a registered nurse or licensed practical nurse. This means that a nurse is in the unit or on the floor where the feeding assistance is furnished and is immediately available to give help, if necessary. We would also revise ''nurse aide'' at § 483.75(e) to clarify that paid feeding assistants are not performing nursing or nursing-related tasks.

We would define ''paid feeding assistant'' in § 488.301, as an individual who is paid by a facility or paid under an arrangement with another agency or organization to feed residents and who meets the requirements specified in § 483.35(h). Any nonprofessional nursing home employee, including the administrator, activity staff, clerical, laundry, or housekeeping staff may be considered a feeding assistant and may feed residents at mealtimes if he or she has completed the training requirements in § 483.160.

These requirements would not apply to volunteers, including family members. Sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act exempt volunteers from the definition of ''nurse aide'' and nurse aide training requirements, which are more stringent than feeding requirements. Therefore, we believe that it is logical to exempt volunteers from requirements concerning feeding assistants. However, volunteers may take the training if they wish, but there is no requirement that they do so.

Feeding assistants are intended to supplement certified nurse aides, not be a substitute for certified or licensed nursing staff. Therefore, feeding assistants may not be counted toward the minimum staffing requirements in § 483.30. Facilities that choose the option to use paid feeding assistants, when consistent with State law, remain responsible for any adverse actions resulting from the use of these assistants, as with any other employee.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether OMB should approve an information collection, section 3506(c)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Nursing homes in two States currently use feeding assistants. While we know of eight other States that have expressed an interest in implementing this policy, it is a facility option and we do not know how many facilities in which States will choose this option. There are approximately 17,000 nursing homes in the nation, and they are not evenly distributed within States. We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 483.160(b)

1. Requirement

A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

2. Burden

Our rough estimate is that 10 States will implement this policy, that is, 20 percent of nursing homes (20 percent of 17,000 = 3400 facilities/respondents). We estimate that each facility will hire two feeding assistants, resulting in a total of 6,800 feeding assistants. Depending on the method chosen by a facility to collect this information, we believe that each facility (respondent) would spend no more than 30 minutes per month (6 hours per year) to enter feeding assistant information into its record-keeping system. Some months, facilities may have no information to add. With 3,400 facilities at 6 hours/year, the total would be 20,400 hours for facilities. Using a wage cost of $10 per hour, the total facility burden is estimated to be $204,000.

Section 483.160(c)

1. Requirement

Each State must require a facility to report to the State all incidents of any paid feeding assistant who has been found to neglect or abuse a resident or misappropriate a resident's property. Each State must maintain a record of all reported incidents.

2. Burden

We estimate that each facility and State will spend no more than 30 minutes per month to add new information to the system. This comes to 6 hours annually per facility and State × 10 facilities/States = 60 hours. Using a wage cost of $10 per hour, the total facility or State cost is estimated to be $600.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this proposed rule, as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of

available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

This proposed rule is not a major rule. It would not result in any budget impact. A facility could employ a feeding assistant under the current regulations. This proposed rule simply reduces the amount of training that would be required for an individual that would furnish only feeding assistance and provides States with the option of using paid feeding assistants, rather than CNAs, to provide feeding assistance.

The RFA requires agencies to determine whether a rule would have significant economic impact on a substantial number of small entities (analyze options for regulatory relief of small businesses). For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually (see 65 FR 69432). For purposes of the RFA, 85 percent of long term care facilities with revenues of $10.0 million or less are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this proposed rule would not have consequential effects on State, local, or tribal governments, or on the private sector. This proposal is an option that does not constitute an unfunded mandate.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We believe that this proposed rule would not have a substantial effect on State or local governments. This proposal is an option, which facilities may choose to adopt if it is consistent with State law and the State promotes this option.

B. Anticipated Effects

These proposed provisions would affect long term care facilities. We expect the provisions to be a substantial benefit both to facilities that are short-staffed and to beneficiaries that need help with eating and drinking. By using feeding assistants, facilities can use trained certified nurse aides to perform more complex resident care tasks. There are approximately 17,000 long term care facilities participating in the Medicare and Medicaid programs. We do not know how many facilities would choose the option to hire feeding assistants. We know of two States that have used feeding assistants for a number of years. Wisconsin nursing homes have been using single-task feeding assistants for more than 7 years, and North Dakota has used them since the 1980s. Several other States have passed laws, or indicated that they wish to implement a feeding assistant program, but have not yet done so (including Ohio, Minnesota, Florida, California, and Illinois). If these States adopt this option, they will realize the benefits of using paid feeding assistants. If we receive additional information from public comments about the number of States that may choose this option and costs to the States and facilities, we will summarize the information in the subsequent final rule.

We believe that both residents and providers would benefit from these provisions. Residents would receive more assistance with eating at meals. Facilities would have greater choices in hiring staff to meet their needs and the needs of residents, freeing certified nurse aides to perform more complex tasks that require their medical training.

C. Alternatives Considered

One alternative to this policy would be for facilities to hire more nursing staff, including nurse aides. However, not only would this cost more, but due to the continuing shortage of certified nurse aides, we know of no other alternatives at the moment that would meet our objectives. Certified nurse aides perform the majority of resident care in a long term care facility and frequent nurse aide shortages often result in less than adequate care for residents and greater stress on certified nurse aides and other staff.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, CMS proposes to amend 42 CFR chapter IV as set forth below:

A. Part 483 is amended as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Subpart B—Requirements for Long Term Care Facilities

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 483.35, the introductory text is republished, paragraph (h) is redesignated as paragraph (i) and republished, and a new paragraph (h) is added to read as follows:

§ 483.35 Dietary services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

* * * * *

(h) *Paid feeding assistants*—(1) *General rule.* A facility may use a paid feeding assistant, as defined in § 488.301 of this chapter, to feed

residents who meet the following conditions:

(i) Need assistance with eating and drinking.

(ii) Based on the comprehensive assessment, do not have a clinical condition that requires the assistance with eating and drinking of a registered nurse, licensed practical nurse, or nurse aide.

(2) *Requirements on facilities.* If a facility uses a paid feeding assistant, the facility must ensure that the feeding assistant meets the following requirements:

(i) *Training.* Completes a State-approved training course that meets the requirements of § 483.160.

(ii) Supervision. Works under the direct supervision of a registered nurse or licensed practical nurse. This means that a nurse is in the unit or on the floor where the feeding assistance is furnished and is immediately available to give help, if necessary.

(i) *Sanitary conditions.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

* * * * *

§ 483.75 [Amended]

3. In § 483.75(e), the definition of ''nurse aide'' is amended by adding the following sentence to the end of the definition: ''Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants as defined in § 488.301 of this chapter.''

* * * * *

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation; and Paid Feeding Assistants

4. The heading of subpart D is revised to read as set forth above.

5. A new § 483.160 is added to read as follows:

§ 483.160 Requirements for training of paid feeding assistants.

(a) A State-approved training course for paid feeding assistants must include, at a minimum, the following:

(1) Feeding techniques.

(2) Assistance with feeding and hydration.

(3) Communication and interpersonal skills.

(4) Appropriate responses to resident behavior.

(5) Safety and emergency procedures, including the Heimlich maneuver.

(6) Infection control.

(7) Resident rights.

(8) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.

(b) A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

(c) A State must require a facility to report to the State all incidents of a paid feeding assistant who has been found to neglect or abuse a resident, or misappropriate a resident's property. The State must maintain a record of all reported incidents.

B. Part 488, subpart E is amended as follows:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

Subpart E—Survey and Certification of Long Term Care Facilities

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh).

2. Section 488.301 is amended by adding a new definition of ''Paid feeding assistant'' in alphabetical order to read as follows:

§ 488.301 Definitions.

As used in this subpart—

* * * * *

Paid feeding assistant means an individual who meets the requirements specified in § 483.35(h)(2) of this chapter and who is paid to feed residents by a facility, or who is used under an arrangement with another agency or organization.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 5, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 14, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–7344 Filed 3–28–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 02–11875]

RIN 2127–AI04

Federal Motor Vehicle Safety Standards; Rear Impact Guard Labels; Notice of Proposed Rulemaking; Grant in Part, Denial in Part of Petition for Rulemaking

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

ACTION: Notice of proposed rulemaking; grant in part, denial in part of petition for rulemaking.

SUMMARY: This document responds to petitions for rulemaking from the Truck Trailer Manufacturers Association, American Trucking Associations, and Compass Transportation, Inc. Petitioners asked the agency to amend the Federal motor vehicle safety standard on rear impact guards by eliminating the labeling requirement. Under that requirement, rear impact guards must be permanently labeled with the guard manufacturer's name and address, the month and year in which the guard was manufactured, and the letters ''DOT.'' The petitioners asked that if NHTSA declined to eliminate the labeling requirement, the agency instead amend the labeling requirement by eliminating the requirement that the label be permanent, and allowing manufacturers to place the label where it may be the least exposed to damage.

This document denies petitioners' requests to eliminate the labeling requirement and the requirement that rear impact guards be permanently labeled, but grants petitioners' request to allow manufacturers to place the label on the rear impact guard where it may be least exposed to damage.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments should refer to the docket number above and be

submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Dr. William J.J. Liu, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; (Telephone: 202–366–2264) (Fax: 202–493–2739).

For legal issues: Mr. Dion Casey, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; (Telephone: 202–366–2992) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 1996, NHTSA published a final rule (61 FR 2003) establishing two Federal Motor Vehicle Safety Standards (FMVSSs) to address the problem of rear underride crashes. These are crashes in which a passenger car, truck, or multipurpose vehicle with a Gross Vehicle Weight Rating (GVWR) of 4,563 kilograms (10,000 lbs) or less (referred to collectively as ''passenger vehicles'') collides with the rear end of a trailer or semitrailer (referred to collectively as ''trailers''), and the front end of the passenger vehicle slides under (i.e., underrides) the rear end of the trailer.

The final rule established two standards that operate together to reduce the number of injuries and fatalities resulting from underride crashes. The first standard (Standard No. 223, Rear Impact Guards) specifies performance requirements that rear impact guards (guards) must meet before they can be installed on new trailers. It specifies strength requirements, as well as test procedures, that NHTSA uses to determine compliance with the standard. Standard No. 223 requires the guard manufacturer to provide instructions on the proper installation of the guard. It also requires guards to be permanently labeled with the guard manufacturer's name and address, the month and year in which the guard was manufactured, and the letters ''DOT.'' The letters constitute a certification by the guard manufacturer that the guard meets all the performance requirements of Standard No. 223. The standard requires manufacturers to place the label on the forward-facing surface of the horizontal member of the guard, 305 millimeters (mm) (12 inches) inboard of the right end of the guard, so that the label is readily visible by Federal Motor Carrier Safety Administration (FMCSA) inspectors.

The second standard (Standard No. 224, Rear Impact Protection) requires most new trailers with a GVWR of 4,536 kilograms (10,000 pounds) or more to be equipped with a rear impact guard meeting the requirements of Standard No. 223. Standard No. 224 specifies requirements regarding the location of the guard relative to the rear of the trailer. It also requires that the guard be mounted on the trailer in accordance with the instructions of the guard manufacturer.

In response to petitions for reconsideration, NHTSA published minor amendments to the standards in the **Federal Register** on January 26, 1998 (63 FR 3654). The standards became effective on that date.

II. Petitions

On December 10, 1998, NHTSA received a petition from the Truck Trailer Manufacturers Association (TTMA) requesting that the agency amend Standard No. 223 by eliminating the guard labeling requirement. TTMA argued that requiring a label on the guard is redundant because vehicle manufacturers are already required to certify compliance with all safety standards. 49 CFR 567.4(g)(5) requires manufacturers to affix to trailers a label containing the statement: ''This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above.''

On December 30, 1998, NHTSA received a similar petition from the American Trucking Associations (ATA), and on January 18, 1999, another petition from Compass Transportation, Inc. Both petitioners argued that the guard labeling requirement is redundant and requested that the agency eliminate the labeling requirement from Standard No. 223.

TTMA requested that if NHTSA declined to eliminate the guard labeling requirement, the agency instead eliminate the requirement that the guard be labeled permanently. TTMA argued that it is unlikely that any label will remain on the guard for the life of the trailer. TTMA also requested that NHTSA allow manufacturers the flexibility to place the label where it may be the least exposed to damage from operational and environmental factors.

III. Discussion and Analysis

A. Guard Labeling Requirement

NHTSA published a Notice of Proposed Rulemaking (NPRM) on January 8, 1981, proposing a single vehicle standard specifying requirements for testing guards on completed trailers. (46 FR 2136). Commenters on the NPRM expressed concern that the proposed requirements would be a substantial financial burden on some trailer manufacturers. These commenters stated that the trailer manufacturing industry consisted primarily of small firms that lacked the engineering capabilities to meet the requirements proposed in the NPRM.

In response to these comments, NHTSA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) on January 3, 1992, that proposed separate equipment and vehicle standards. (57 FR 252). Standard No. 223 provided for the testing of guards on a test fixture, and Standard No. 224 required guards complying with Standard No. 223 to be installed on trailers. The agency concluded that these separate standards would allow trailer manufacturers to purchase guards complying with Standard No. 223 from guard manufacturers, thus relieving trailer manufacturers, especially small manufacturers, of the burden associated with compliance testing.

In its comments on the SNPRM, TTMA stated,

> We appreciate your concern for the small trailer manufacturer in providing for the manufacturer of the guard being a different company than the manufacturer of the trailer. However, due to the variety of trailer configurations, often custom designs, it is likely that a substantial number of trailer manufacturers will manufacture their own guards.

TTMA claimed that affixing a certification label to the guard is redundant in those instances in which the guard is manufactured by the trailer manufacturer because the trailer manufacturer already has to certify compliance with all applicable FMVSSs under 49 CFR 567.4(g)(5). Thus, TTMA requested that trailer manufacturers who also manufacture their own guards be excluded from the guard labeling requirement.

The agency responded that allowing some guard manufacturers to omit the label would be impractical from an enforcement standpoint because trailer

inspectors would not be able to tell whether the guard was certified by the guard/trailer manufacturer as part of the trailer, or whether the trailer manufacturer installed a guard purchased from a guard manufacturer who did not make the required certification. The agency also did not believe that affixing the label would be a significant burden. Thus, the final rule retained the guard certification label requirement for all guards.

In their discussion of the labeling requirement, the TTMA, ATA, and Compass Transportation, Inc., petitions are nearly identical to the comments that TTMA submitted in response to the SNPRM. However, the petitioners requested that NHTSA eliminate the guard labeling requirement for all guards, regardless of who manufactures the guard.

The petitioners correctly stated that 49 CFR 567.4(g)(5) already requires trailer manufacturers to label each trailer as complying with all Federal motor vehicle safety standards. However, the separate equipment and vehicle standards allow a trailer manufacturer to install a complying guard produced by a guard manufacturer rather than by the trailer manufacturer itself. NHTSA developed the separate equipment and vehicle standards in an effort to relieve trailer manufacturers of the financial burden of compliance testing. Indeed, the separate equipment and vehicle standards were implemented largely in response to industry concerns about the cost of compliance testing.

While NHTSA has found that the majority of trailer manufacturers do manufacture and install their own guards, the agency has not received information from the petitioners or other parties showing a need to revise the separate equipment and vehicle standards. Without such information, the agency is not persuaded to change its position. Accordingly, NHTSA is denying the petitioners' request to eliminate the guard labeling requirements in Standard No. 223.

B. Permanent Requirement

TTMA requested that, if NHTSA maintained the guard labeling requirements in Standard No. 223, the agency instead change the wording of the labeling requirement to (1) delete the requirement that the label be permanent, and (2) allow manufacturers some flexibility regarding the location of the label on the guard so that the label may be placed where it is least exposed to damage from operational and environmental factors.

S5.3 of Standard No. 223 currently reads:

> Each guard shall be permanently labeled with the information specified in S5.3 (a) through (c) of this section. The information shall be in English and in letters that are at least 2.5 mm high. The label shall be placed on the forward-facing surface of the horizontal member of the guard, 305 mm inboard of the right end of the guard.

TTMA first suggested eliminating the requirement that the label be permanent. In its petition, TTMA argued:

> It is unlikely that any label will remain on the guard for the life of the trailer. A label on the forward facing portion of the horizontal member will be abraded by road dust, gravel, ice, snow, and other grime and debris. If the label were allowed on the rearward facing portion of the horizontal member it would be abraded on some types of trailers by contact between the horizontal member and loading docks and other structures.

However, TTMA provided no information documenting any problems trailer or guard manufacturers have experienced in meeting the requirement for a permanent label.

NHTSA acknowledges that the permanency of the label is not significant for the purpose of testing new guards for compliance with Standard No. 223. When the guard is new, the environmental and operational conditions that may damage guard labels are not an issue.

However, on September 1, 1999, the Federal Highway Administration (FHWA) published a Final Rule amending the Federal Motor Carrier Safety Regulations regarding rear impact protection to make them consistent with Standard Nos. 223 and 224. (64 FR 47703). FHWA stated that its proposed labeling requirement (now codified at 49 CFR 393.86(f)) was included, in part, ''to help motor carriers quickly determine if the underride device on a newly manufactured trailer meets NHTSA's requirements, and to assist State agencies responsible for enforcing motor carrier safety regulations.'' (63 FR 26759, May 14, 1998).

NHTSA generally does not specify a particular means (*i.e.,* labeling, etching, branding, stamping, or embossing) by which the manufacturer must achieve permanency. Thus, for NHTSA compliance purposes, the guard label is considered permanent if it satisfies the certification requirements specified in 49 CFR part 567. Section 567.4(b) specifies, ''The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.''

In consideration of the above, the agency continues to believe that the label must be permanently affixed. Thus, NHTSA is denying the petitioners' request to amend S5.3 of Standard No. 223 by eliminating the requirement that the guard label be permanent.

C. Location of Label

Finally, in its petition, TTMA requested:

> that the guard manufacturer have the flexibility to locate the label where it may experience the least exposure to damage. This location may vary according to the type of trailer and its use. Some trailers do not back up to loading docks while other trailers may have exposure to chemical products and environments.

As noted above, S5.3 of Standard No. 223 currently requires the label to be placed on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard.

The location of the guard label is of little significance to NHTSA personnel conducting compliance testing on new guards. The agency does not believe that allowing manufacturers flexibility in selecting the location of the label on the guard will be detrimental to its safety purposes.

The location of the guard label is of greater significance to FMCSA [1] and state inspectors charged with verifying that trailers on the road meet the applicable Federal Motor Carrier Safety Regulations and NHTSA standards. However, FMCSA representatives have indicated to NHTSA that during a typical Level 1 inspection, inspectors usually have ready access to the underside of the trailer. This enables the inspector to view the entire length of the horizontal member of the guard from both the front and rear. FMCSA representatives indicated that the specific location of the guard label is not critical, so long as it is located somewhere on the horizontal member of the guard.

S5.7.1.4.1(c) of Standard No. 108 requires retroreflective sheeting to be placed across the full width of the horizontal member of the guard. The minimum width of the retroreflective sheeting is one and one-half inches. Since S5.1 of Standard No. 223 requires that the projected cross-sectional height of the horizontal member of each guard must be at least four inches, there should be ample space to affix the guard label on the rearward-facing surface of

[1] The Federal Motor Carrier Safety Administration, which regulates commercial vehicles, was a part of the FHWA.

the horizontal member of the guard without interfering with the retroreflective sheeting, if the manufacturer determines that this location will be the least susceptible to operational or environmental damage.

Accordingly, NHTSA is proposing to amend S5.3 of Standard 223 to allow manufacturers flexibility in deciding where to place the label on the horizontal member of the guard so that they can minimize exposure to operational and environmental damage. The agency is proposing to revise the third sentence of S5.3 of Standard No. 223 to read as follows:

The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This notice was not reviewed under Executive Order 12866. In this document, NHTSA is simply proposing to give guard manufacturers greater choice regarding the location in which they place the guard certification label. They would be able to place it in a specified region on the forward or rearward-facing horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by Standard No. 108 and is readily accessible for visual inspection. Since Standard No. 223 already requires guard manufacturers to place the certification label on compliant guards, the agency believes that this proposal would not have any economic effects.

The DOT's regulatory policies and procedures require the preparation of a full regulatory evaluation, unless the agency finds that the impacts of a rulemaking are so minimal as not to warrant the preparation of a full regulatory evaluation. Since NHTSA is simply proposing to give guard manufacturers the flexibility to place the guard certification label on the guard where it will be the least exposed to damage, the agency believes that the impact of this rulemaking would be minimal. Thus, a full regulatory evaluation has not been prepared.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's (SBA) regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Most trailer and guard manufacturers qualify as small businesses under the SBA's regulations. However, as explained above in the section on Executive Order 12866 and DOT Regulatory Policies and Procedures, the agency believes that the impacts of this rulemaking would be minimal. The agency is simply proposing to allow guard manufacturers the flexibility to place the guard certification label on the guard where it will be the least exposed to damage. Therefore, I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The Executive Order defines ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this proposed rule would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49

U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This proposed rule would not require any collections of information as defined by the OMB in 5 CFR part 1320.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when it decides not to use available and applicable voluntary consensus standards.

There are no applicable voluntary consensus standards available at this time. However, NHTSA will consider any such standards if they become available.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, 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 in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. Thus, the agency has not prepared an Unfunded Mandates assessment.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Has the agency organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could the agency improve clarity by adding tables, lists, or diagrams?
—What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

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). NHTSA 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 address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

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, at the address given above 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 above 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?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for NHTSA to consider it in developing a final rule (assuming that one is issued), the agency 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 given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

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 beginning of this document. *Example:* If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571.223—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.223 would be amended by revising the third sentence of S5.3 as follows:

§ 571.223 Standard No. 223; Rear impact guards.

* * * * *

S5.3 *Labeling.* * * * The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection.

* * * * *

Issued: March 22, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–7568 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH95

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Newcomb's Snail, Extension of Comment Period, Notice of Public Hearing, and Notice of Availability of the Draft Economic Analysis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period, notice of public hearing, and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide notice that a public hearing will be held on the proposed determination of critical habitat for the Newcomb's snail *(Errina newcombi)* and that the comment period on this proposal is extended; we also announce the availability of the draft economic analysis of this proposed designation of critical habitat. Newcomb's snail is found on the island of Kauai, Hawaii. We are extending the comment period for the proposal to designate critical habitat for this species to hold the public hearing and to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in the final rule.

DATES: The public hearing will be held from 6 p.m. to 8 p.m. on April 17, 2002, in Lihue, HI. Prior to the public hearing, the Service will be available from 3:30 p.m. to 4:30 p.m. to provide information and to answer questions. Registration for the hearing will begin at 5:30 p.m. The comment period, which originally closed on March 29, 2002, will now close on April 29, 2002.

ADDRESSES: The public hearing will be held at the Radisson Kauai Beach Resort, 4331 Kauai Beach Drive, Lihue, Kauai, HI. The draft economic analysis is available from, and written comments and information should be submitted to, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

Newcomb's snail is a type of freshwater snail belonging to the lymnaeid family of snails. Adult Newcomb's snails are approximately 6 millimeters (mm) (0.25 inches (in)) long and 3 mm (0.12 in) wide in size. Its shell is smooth and black, formed by a single, oval whorl, about 6 mm (0.25 in) long. The tentacles of Newcomb's snail, like other lymnaeids, are flat and triangular, rather than conical or filament-shaped as found on other freshwater snails. Newcomb's snails feed upon algae and other material growing on submerged rocks. Eggs are attached to underwater rocks or vegetation and the entire life cycle is tied to the stream system in which the adults live.

Populations of Newcomb's snail are currently found in small areas within the Kalalau, Lumahai, Hanalei, Waipahee, Makaleha, and North Wailua stream systems on the Hawaiian island of Kauai. Historically, Newcomb's snail

was found in Hanakoa, Hanakapiai, and Wainiha streams, but these populations are thought to be extirpated. The known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals.

Some of the suspected historical decline of the snail may be attributed to habitat loss and degradation through water diversion and well drilling. Currently, predation by alien species, natural disasters and habitat alteration are threats that imperil Newcomb's snail. The rosy glandina snail *(Euglandina rosea)* is an introduced snail that preys mostly on other snails. Two species of non-native marsh flies prey upon eggs and adults of Hawaiian freshwater snails. These flies were introduced in 1955 and 1966 as bio-control agents for a non-native snail that hosts a cattle parasite. Other introduced predators include introduced fish and frogs. Presently, Newcomb's snail faces an increased likelihood of extinction from naturally occurring events such as hurricanes due to the small number of remaining populations and their limited distribution.

Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), *Errina newcombi* was listed as a threatened species on January 26, 2000 (65 FR 4162). On January 28, 2002, we published a proposed rule in the **Federal Register** (67 FR 3849) to designate critical habitat for Newcomb's snail. Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the **Federal Register**. We received 2 requests for a public hearing during this time period. In response to these requests, we will hold a public hearing on the date and location described in the **DATES** and **ADDRESSES** section above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at this hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing are being published in newspapers concurrently with this **Federal Register** notice.

We propose to designate critical habitat in nine critical habitat units that total 26.29 kilometers (km) (16.33 miles (mi)) of main stream channel; in total, these areas encompass approximately 2,109 hectares (ha) (5,212 acres (ac)). Six of these sites are located on state lands, and three of these sites are on lands that are privately owned. Critical habitat units are proposed for reaches of stream main channel that range in length from 0.8 km (0.5 mi) to 7.58 km (4.71 mi); the units range in size from 35 ha (86 ac) to 876 ha (2165 ac).

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for Newcomb's snail, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

The original comment period was due to close on March 29, 2002. In order to accommodate the hearing and to provide the public with the opportunity to comment on the draft economic analysis of this proposed critical habitat designation as well as the proposed rule, we also extend the comment period. Written comments may now be submitted until April 29, 2002, to the Service office in the **ADDRESSES** section.

Public Comments Solicited

We will accept written comments and information during this extended comment period. If you wish to comment, you may submit written comments and information to the Field Supervisor, Pacific Islands Fish and Wildlife (see **ADDRESSES** section). Alternatively, you may hand-deliver comments to our Pacific Islands Fish and Wildlife Office at the above address.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address above. Copies of the draft economic analysis are available by writing to the Field Supervisor at the address above.

Author

The primary author of this notice is Gordon Smith, Fish and Wildlife Biologist, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 26, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–7724 Filed 3–28–02; 8:45 am]

BILLING CODE 4318–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 223, and 224

[Docket No.020319061–2061–01; I.D. 031402B]

RIN 0648–AP81

Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to prohibit the use of all pound net leaders measuring 12 inches (30.5 cm) and greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay from May 8 to June 30 each year. The affected area includes all Chesapeake Bay waters between the Maryland and Virginia state line (approximately 38 N. lat.) and the COLREGS line at the mouth of the Chesapeake Bay, and the waters of the James River, York River, and Rappahannock River downstream of the first bridge in each tributary. This action, taken under the Endangered Species Act of 1973 (ESA), is necessary to conserve sea turtles listed as threatened or endangered and aid in the enforcement of the prohibition on takes.

DATES: Comments on this action are requested, and must be received at the appropriate address or fax number (**ADDRESSES**) by no later than 5 p.m., eastern daylight time, on April 15, 2002.

ADDRESSES: Written comments on this action or requests for copies of the literature cited, the draft Environmental Assessment (EA)/ Regulatory Impact Review (RIR) should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments and requests for supporting documents may also be sent via fax to 978–281–9394. Comments will not be

accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Mary A. Colligan (ph. 978–281–9116, fax 978–281–9394), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking listed sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA. No incidental take of endangered sea turtles is currently authorized in the Virginia pound net fishery.

Existing information indicates that pound nets with large mesh and stringer leaders incidentally take sea turtles. A pound net leader with stretched mesh greater than 12 inches (30.5 cm) is considered to be a large mesh leader. A stringer leader consists of vertical lines spaced apart in a portion of the leader and mesh in the rest of the leader. Based on the available information, NMFS determined that interactions with pound net leaders were the most likely cause of a significant portion of documented sea turtle mortality in the Chesapeake Bay during the spring of 2001. Furthermore, NMFS believes it is likely that pound nets are a significant factor in the unusual spring sea turtle mortality event that occurs annually in Virginia state waters. This proposed action is necessary to provide for the conservation of threatened and endangered turtles by minimizing incidental take in the Virginia pound net fishery during the spring.

Virginia Spring Stranding Event

The Sea Turtle Stranding and Salvage Network (STSSN), a network of organizations authorized by NMFS to respond to sea turtle stranding events, has documented high sea turtle strandings in Virginia waters during the spring for the past 23 years. From 1994 to 2001, the average date of the first reported stranding was May 15, and the highest number of strandings typically occurred during the second half of May through the end of June, when turtles were migrating into the Bay. The magnitude of this stranding event has increased in recent years. During May and June, total reported Virginia sea turtle strandings were 84 in 1995, 85 in 1996, 164 in 1997, 181 in 1998, 129 in 1999, and 155 in 2000. Strandings during the spring of 2001 were exceptionally high; preliminary data indicates that 265 sea turtles stranded on Virginia beaches during May and June. This was twice the average number of turtles that stranded annually during this time period from 1995 to 2000. From 1995 to 2000, 60 percent of all reported strandings occurred during May and June.

Most of the stranded sea turtles in Virginia have been loggerheads, but endangered Kemp's ridley and leatherback sea turtles have also stranded. Out of 1,067 total strandings in May and June from 1995 to 2001, 958 loggerheads, 59 Kemp's ridleys, 17 leatherbacks, 1 green, and 32 unidentified turtles were found. The majority of the stranded turtles have been of the juvenile/immature life stage.

While some turtles with traumatic carapace injuries, propeller-like wounds or imbedded fish hooks (injuries not associated with pound nets) are documented each year, no cause of mortality is obvious for the majority of turtles that strand in Virginia. While current stranding levels are higher than in previous years, relatively healthy animals have been stranding on Virginia beaches for at least 20 years. Bellmund, *et al.* (1987) found that during spring stranding events in 1983 and 1984, all turtles examined seemed healthy with the exception of one injured and two emaciated turtles.

Although fresh dead turtles were found earlier in the season, most of the stranded turtles reported in the spring of 2000 and 2001 were moderately to severely decomposed. The ability to conduct necropsies is compromised by the condition of the stranded animals, and severely decomposed turtles are not usually necropsied. The majority of the stranded turtles that were examined by necropsy in 2000 and 2001 had good fat stores, suggesting that the animals were in good health prior to their death. Many of the necropsied turtles had full stomachs, and contents included blue crab, horseshoe crab, and fish. Twenty-three of 66 loggerheads necropsied between May and December 2001 contained fish parts. The majority of the 2001 necropsies were conducted on animals that stranded in the Western Bay and on the Chesapeake Bay side of the eastern shore.

The distribution of sea turtle strandings in Virginia varies slightly from year to year, but historically, most of the spring strandings in Virginia have been documented on the ocean facing beaches south of Cape Henry and the inshore beaches in the southern Chesapeake Bay. For instance, the majority of 1999 spring strandings occurred offshore in the Virginia Beach Oceanside area around the mouth of the Chesapeake Bay, but the majority of the spring strandings in 1998, 2000, and 2001 occurred in inshore waters with concentrations around the southern tip of the eastern shore and the southern portion of the Chesapeake Bay around Virginia Beach and Hampton. Strandings in 2001 were of particular concern because the majority of the strandings (approximately 65 percent) in May and June occurred along the Chesapeake Bay side of the eastern shore of Virginia and along the southern tip near Kiptopeke and Fisherman's Island, indicating a possible localized interaction. It is possible that some Virginia Chesapeake Bay turtle strandings are swept into the Chesapeake Bay from elsewhere, as the water patterns and currents entering the Chesapeake Bay could concentrate sea turtle strandings around the mouth. However, it is likely that in the Virginia Chesapeake Bay, most mortalities have occurred relatively close to the stranding location (Lutcavage 1981). Further, it has been estimated that strandings on ocean facing beaches represent, at best, only approximately 20 percent of the at-sea nearshore mortality, as only those turtles killed close to shore are most likely to strand (NMFS SEFSC 2001).

Factors Contributing to Strandings

In response to the long term trend in elevated sea turtle strandings, NMFS instituted a program in 2001 to investigate interactions between sea turtles and Virginia fisheries during the historical stranding period. This program included inshore and offshore aerial surveys, traditional and alternative platform observer coverage of gillnet and pound net fisheries, and sonar surveys of pound net leaders.

There is a complex mix of fisheries operating in Virginia Chesapeake Bay and ocean waters during May and June, including large and small mesh gillnet fisheries, whelk and crab pot fisheries, haul seine fisheries, scallop dredge and trawl fisheries, and the pound net fishery. At the time of the 2001

strandings, NMFS observed a number of the fisheries active in Virginia and did not detect significant sea turtle mortality. However, additional observer coverage is needed to adequately determine the level of sea turtle interactions with the various fisheries operating during the spring.

The federally managed monkfish large mesh gillnet fishery (approximately 10–12 inch (25.4–30.5 cm) mesh) had approximately 41–percent observer coverage in waters off Virginia from May 1 until it stopped operating off Virginia on May 29 when the fleet moved northward. In Virginia, 107 monkfish trips were observed, and one dead and two live loggerhead turtles were incidentally captured in this fishery. In May and June 2001, the monkfish fishery landed approximately 16 percent of the total landings with gillnet gear in Virginia. Two 10–14 inch (25.4–35.6 cm) mesh gillnet fisheries, the black drum and sandbar shark gillnet fisheries, occurred in state waters, in the vicinity of the highest number of turtle strandings (along the tip of the eastern shore). The black drum fishery had approximately 8–percent observer coverage during May and June, and no turtle takes were observed. Additionally, almost all of the black drum fishing effort ceased at the beginning of June, and there was not a large amount of sandbar shark gillnet effort during the spring stranding period. No large mesh gillnet fishing in the vicinity of the mouth of the Chesapeake Bay occurs from June 1 to June 30; during this time, gillnets with a stretched mesh size greater than 6 inches (15.2 cm) are prohibited in Virginia's portion of the Chesapeake Bay south of Smith Island.

During 2001, the small mesh gillnet fisheries (smaller than 6 inch (15.2 cm) mesh) were also considered as a potential contributor to the high sea turtle strandings. However, the amount of gillnet effort occurring in the Chesapeake Bay waters during May and June appears to be relatively small (e.g., approximately 11 percent of total Virginia Chesapeake Bay landings). Further, aerial surveys were conducted by the Virginia Institute of Marine Science (VIMS) in the inshore waters of the Chesapeake Bay and minimal gillnet effort was observed during June 2001. Of the total gillnet landings in Virginia offshore and inshore waters during May and June 2001, small mesh gillnet landings for a variety of species, including Atlantic croaker and dogfish, represented approximately 82 percent. NMFS observed 2 percent of the Atlantic croaker fishery and 12 percent of the dogfish fishery during that time; no turtle takes were observed. While small mesh gillnets may entangle sea turtles, the level of interaction in Virginia waters during the spring is not expected to be high.

The Virginia Marine Resources Commission (VMRC) restricted the use of trawls in Virginia's portion of the Chesapeake Bay in 1989, and no trawling effort occurs in the Chesapeake Bay. Aerial surveys, landings data, and dock surveys indicate that limited trawling occurs in Federal waters offshore of Virginia during May and June; approximately 18 percent of total ocean landings in May and June 2001 were by scallop trawl gear (2,456 metric tons of 13,739 metric tons total). The scallop dredge fishery operates off of Virginia during May and June, consisting of approximately 78 percent of the total ocean landings in May and June 2001. Sea turtle interactions with scallop dredges have been observed, but the magnitude of the interactions with this gear type has not been determined. While additional information is needed, this fishery may contribute to some sea turtle mortality documented on Virginia ocean side beaches.

While whelk and crab pots may contribute to sea turtle mortality, it is unlikely that interactions with this gear type would result in a time and area specific mass stranding event. The majority of the whelk pot effort is found offshore, particularly outside Virginia's state waters, and few fishermen set their pots inside the Chesapeake Bay (Mansfield *et al.*, 2001). The peak spring months for the whelk pot fishery are April and May. Crab pot fishing occurs throughout the Chesapeake Bay, including along the eastern shore and tip of the Delmarva Peninsula. Approximately 36 percent of the total Virginia Chesapeake Bay landings in May and June 2001 were from crab pots. Sea turtles may become entangled in crab pot gear, but due to the nature of the gear and manner in which it's fished, interactions are difficult to detect. As such, the magnitude of this fishery's contribution to Virginia sea turtle strandings is not known, but it is unlikely that sea turtle interactions with crab pots result in a mass mortality event.

While a number of fisheries may contribute to sea turtle strandings, available data indicate that large mesh and stringer pound net leaders result in sea turtle entanglement and that the pound net fishery was a likely cause of a significant portion of the sea turtle mortality in the Chesapeake Bay during the spring of 2001. Pound nets are set throughout the Chesapeake Bay, in both Maryland and Virginia waters. In Virginia, the majority of pound net stands are located around the Virginia shore south of the mouth of the Potomac River (south of Smith Point), around the mouth of the Rappahannock River, around the mouth of the York River/Mobjack Bay, and along the southern portion of the eastern shore of Virginia. Landings by pound nets represented approximately 40 percent of the total landings in the Virginia Chesapeake Bay during May and June 2001.

During 1980, high strandings were documented in areas where there were large numbers of working pound nets (Lutcavage, 1981). Additionally, pound nets are the dominant fishing gear observed immediately offshore of the Kiptopeke area and along the southern portion of the Virginia eastern shore, where most of the strandings occurred in the spring of 2001 and a concentration of spring strandings were documented in 1998 and 1999.

Stringer leaders are found in the western Chesapeake Bay, around the tip of Mobjack Bay and just south of the mouth of the Potomac River, near Reedville. Strandings during 1998 to 2001 were observed on the western shore of the Chesapeake Bay in the vicinity of stringer pound net leaders, but strandings during these years were almost always highest in other areas of the Chesapeake Bay (e.g., during the spring of 2001, strandings were highest along the eastern shore). High turtle mortalities in late May and early June in Virginia have previously been attributed to entanglement in large mesh and stringer pound net leaders in the Chesapeake Bay (Lutcavage, 1981; Bellmund, *et al.* 1987). Specifically, pound net entanglement has been determined to account for up to 33 percent of sea turtle mortality in the Chesapeake Bay during some summers (Lutcavage and Musick 1985). A Virginia pound net survey in the 1980s documented ''many dead loggerheads and one [Kemp's] ridley hung by heads or limbs in area poundnet hedging [leaders]'' (Lutcavage, 1981). This study also determined that based upon constriction features on stranded turtles, some beached carcasses had previously floated free of pound net leaders and that it was plausible that unidentified pound net leader deaths could account for many of the carcasses for which no mortality sources have been identified. However, five turtles entangled in pound net leaders were examined during 1984 and none of these turtles became disentangled by natural causes. These sea turtles instead completely decomposed in situ within 5 weeks (Bellmund, *et al.* 1987). While additional information is necessary to

determine how often sea turtles become disentangled from pound net leaders, it is plausible that turtles may become dislodged from pound net leaders either by the strong current in certain areas of the Chesapeake Bay, the decomposition process, or fishermen disentangling dead sea turtles if detected.

Data collected in 1983 and 1984 found turtle entanglement in pound nets with small mesh leaders (defined as 8 to 12 inch (20.3 to 30.5 cm) stretched mesh) to be insignificant, but in 173 pound nets examined with large mesh leaders (defined as >12 to 16 inch (>30.5 to 40.6 cm) stretched mesh), 0.2 turtles per net were found entangled (30 turtles; Bellmund, *et al.*, 1987). This study also found that in 38 nets examined with stringer mesh, 0.7 turtles per net were documented entangled (27 turtles). The sampling area was concentrated in the western Chesapeake Bay, with some sampling occurring in other portions of the Virginia Chesapeake Bay. Turtle entanglements in pound net leaders began in mid-May, increased in early June, and reached a plateau in late June (Bellmund, *et al.* 1987). In 1984, no entanglements were observed after late June. Surveys in 1979 and 1980 also found that most of the pound net leaders that captured sea turtles consisted of large mesh (12 to 16 inches (30.5 to 40.6 cm)) and were found in the lower Chesapeake Bay. Anecdotal reports from North Carolina pound net fishermen during the early 1980s stated that sea turtle entanglements occurred in pound net leaders with approximately 8 inch (20.3 cm) mesh and greater. While smaller mesh nets may pose some entanglement risk to sea turtles, the degree of entanglement has not been documented as well as entanglement in stretched mesh leaders 12 inches (30.5 cm) and greater. Leader mesh greater than or equal to 12 inch (30.5 cm) stretch and leaders with stringers likely account for the largest number of sea turtle entanglements in pound net gear in the Virginia Chesapeake Bay.

NMFS recognizes that the majority of scientific information on sea turtle and pound net interactions in Virginia dates back to the 1980s. However, the factors involved in entanglement, namely the size of sea turtles' heads and flippers relative to mesh size and stringers, are the same today as they were in the 1980s. NMFS anticipates that sea turtles will continue to interact with large mesh and stringer leaders in the Chesapeake Bay. In fact, during the spring of 2001, several sea turtles were documented in association with pound net leaders. VMRC law enforcement agents documented one live and three dead sea turtles in pound net leaders along the eastern shore. The live turtle was entangled in a leader with greater than 12 inches (30.5 cm) stretched mesh, but the leader mesh size of the other entanglements was not documented. Additionally, during June of 2000, VMRC law enforcement agents reported disentangling two live sea turtles from two eastern shore leaders with greater than 12 inches (30.5 cm) stretched mesh. Although it is possible that some turtle carcasses drift into pound net leaders post-mortem, sea turtles have been documented entangled in pound net leaders where entanglement was determined to be the cause of death.

Sea turtle entanglements in pound net leaders are difficult to detect. Sea turtles observed in leaders in the spring of 2001 were found at the surface. Due to the poor water clarity in the Chesapeake Bay, turtles entangled below the surface cannot be observed. Additionally, pound net fishermen do not typically tend their leaders, so a turtle entangled in the leader, even at the surface, may go unnoticed. It is likely that significantly more sea turtles are entangled in pound net leaders than are observed or reported (Lutcavage 1981). Similarly, it is probable that significantly higher turtle mortality occurred over the past 23 years than was documented on Virginia beaches. Since many dead turtles fail to strand where they can be documented by the STSSN, the number of stranded turtles represents an unknown sub-sample of the total mortality that occurs each spring.

NMFS has investigated other potential causes for the annual spring sea turtle mortality event, but natural or non-fishing related anthropogenic causes are not consistent with the nature of the strandings. The absence of other species in the most recent stranding events and the absence of high sea turtle strandings in other Atlantic states during the time period when turtles are migrating are inconsistent with cold stunning, a toxic algae bloom, epizootic or other disease. Further, the stranded turtles exhibited no major traumatic injuries such as might be caused by dredging or blasting. Conversely, the circumstances surrounding the spring strandings are consistent with fishery interactions, which include relatively healthy turtles prior to the time of their death, a large number of strandings in a short time period, no external wounds on the majority of the turtles, no common characteristic among stranded turtles that would suggest disease as the main cause of death, and turtles with fish in their stomach. Sea turtles are generally not agile enough to capture finfish under natural conditions, and thus would only consume large quantities of finfish by interacting with fishing gear or bycatch (Mansfield, *et al.* 2002, Bellmund, *et al.* 1987, Shoop and Ruckdechel 1982).

Based on the nature and location of turtle strandings, the type of fishing gear in the vicinity of the greatest number of strandings, the lack of observed takes in other fisheries operating in Virginia waters during the 2001 stranding period, the known interactions between sea turtles and large mesh and stringer pound net leaders, and several documented sea turtle entanglements in pound net leaders, NMFS concluded that pound nets were a likely cause of a significant number of the high sea turtle strandings in Virginia in May and June 2001.

As a result of information obtained in 2001, NMFS implemented an emergency rule that required all pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and all pound net leaders with stringers to be tied up in the Virginia waters of the mainstem Chesapeake Bay and the tidal waters of the James, York, and Rappahannock Rivers from June 19 to July 19, 2001 (66 FR 33489 June 22, 2001). Sea turtle strandings decreased after this rule was in effect, but as a result of delays in determining which fishery caused the strandings and in implementing management measures, the rule was enacted after the period of the highest sea turtle strandings. The emergency measures likely reduced subsequent entanglements in large mesh and stringer pound net leaders. While fishery interactions may vary from year to year, NMFS believes it is likely that pound nets contribute to the high sea turtle strandings documented every spring.

Impacts on Sea Turtles

The annual high mortality in Virginia in May and June is of concern for the following reasons: (1) The level of spring strandings in Virginia has been high for approximately 20 years and elevated for the last 5 years, and it is believed that high strandings will continue to occur during this time period; (2) strandings over the past 4 years have been concentrated along the southern tip of the eastern shore, suggesting a potential localized interaction; (3) approximately 50 percent of the Chesapeake Bay loggerhead foraging population is composed of the northern subpopulation, a subpopulation that may be declining; and (4) most of the stranded turtles have been juveniles, a

life stage found to be critical to the long term survival of the species.

Most loggerheads in U.S. waters come from one of four genetically distinct nesting subpopulations. A subpopulation that nests in south Florida is much larger and has shown recent increases in numbers of nesting females. The increase in documented sea turtle mortalities in Virginia could partly be a function of the increase in the southern subpopulation of loggerheads, which make up approximately 50 percent of the loggerheads found in the Chesapeake Bay. The northern subpopulation that nests from northeast Florida through North Carolina is much smaller and nesting numbers are stable or declining. Genetic studies indicate that approximately one-half of the juvenile loggerheads inhabiting Chesapeake Bay during the spring and summer are from the smaller, northern subpopulation (TEWG 2000; Norrgard, 1995). Approximately 3,800 nesting females are estimated for the northern subpopulation of loggerhead sea turtles (TEWG 2000). The impact of the high level of mortality experienced by loggerhead turtles each spring off Virginia on the population's ability to recover is of significant concern. The northern subpopulation produces 65 percent males, while the southern subpopulation is estimated to produce 80 percent females (NMFS SEFSC 2001). As males do not appear to show the same degree of site fidelity as females, it is possible that the high proportion of males produced in the northern subpopulation are an important source of males for all loggerheads inhabiting the Atlantic. The loss of the male contribution from the northern subpopulation may restrict gene flow and result in a loss of genetic diversity to the loggerhead population as a whole. The loss of females from the northern subpopulation may preclude future reproduction, reducing the likelihood of both future survival and recovery of the northern subpopulation of loggerheads. While the size of the southern subpopulation of loggerheads appears to be increasing, the high level of spring sea turtle mortality in Virginia must be reduced to help ensure that the southern subpopulation of loggerheads continues to recover.

Most of the turtles stranding in Virginia waters during the spring are of the juvenile/immature life stages. The specific age at maturity for most sea turtles is unknown; the age of maturity for loggerheads occurs from approximately 21–35 years (TEWG 2000). Studies have concluded that sea turtles must have high annual survival as juveniles and adults to ensure that sufficient numbers of animals survive to reproductive maturity to maintain stable populations (Crouse, *et al.* 1987, Crowder, *et al.*, 1994, Crouse, 1999). Given their long maturation period, relatively small decreases in annual survival rates of both juvenile and adult loggerhead sea turtles may destabilize the population, thereby potentially reducing the likelihood of survival and recovery of the population. As such, the historical high level of mortality in Virginia plus the increase in loggerhead mortality documented during the last several years may negatively affect the recovery of the loggerhead population.

Modification of Pound Net Gear

To conserve sea turtles, the Assistant Administrator, NOAA, (AA) proposes to prohibit the use of all pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries from May 8 to June 30 each year. The area where this gear restriction would apply includes the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia state line (approximately 37° 55′ N. lat., 75° 55′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.); the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55′ N. lat, 76° 30.40′ W. long.); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.).

This prohibition of pound net leaders would be effective from 12:00 a.m. local time on May 8 through 11:59 p.m. local time on June 30 each year. For the duration of this proposed gear restriction, fishermen would be required to stop fishing with pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers in the designated area.

From 1994 to 2001, the average date of the first reported stranding in Virginia was May 15. However, sea turtle mortality would have occurred before the animals stranded on Virginia beaches. In order for the proposed pound net restrictions to reduce sea turtle interactions with pound net leaders and reduce any subsequent strandings on Virginia beaches, the proposed measures should go into effect at least 1 week prior to the stranding commencement date, or on May 8 each year. Based upon STSSN strandings data, strandings in Virginia typically remain elevated until June 30, indicating that turtles may be vulnerable to entanglement in pound net leaders until this time. Implementation of the proposed gear restrictions during this time period is expected to prevent the reoccurrence of sea turtle takes in the pound net fishery in the spring and high numbers of strandings in Virginia.

In addition to establishing the restriction on leader mesh size and leaders with stringers, this proposed rule would also create a framework mechanism by which NMFS may make changes to the restrictions and/or their effective dates on an expedited basis in order to respond to new information and protect sea turtles. Under this framework mechanism, if NMFS makes a determination, for example, due to water temperature and the timing of sea turtles' migration, that sea turtles may still be vulnerable to entanglement in pound net leaders after June 30, the AA may extend the effective dates of this regulation. Should an extension of the effective dates of the prohibition of pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers be necessary, NMFS would issue a final rule to be effective upon publication in the **Federal Register** explicitly stating the duration of the extension. The extension would not exceed 30 days from the date of its publication.

From May 8 to June 30, NMFS intends to continue to closely monitor sea turtle stranding levels and other fisheries active in the Chesapeake Bay and nearshore and offshore Virginia waters, including pound net leaders with a stretched mesh size measuring less than 12 inches (30.5 cm). If monitoring of pound net leaders reveals that one sea turtle is entangled alive in a pound net leader less than 12 inches (30.5 cm) stretched mesh or that one sea turtle is entangled dead and NMFS determines that the entanglement contributed to its death, then NMFS may determine that additional restrictions are necessary to conserve sea turtles and prevent entanglements. Such additional restrictions may include reducing the allowable mesh size for pound net leaders or prohibiting all pound net leaders regardless of mesh size in Virginia waters. Should NMFS determine that an additional restriction is warranted, NMFS would immediately file a final rule with the Office of the **Federal Register**. Such a rule would explicitly state the new mandatory gear restriction as well as the time period, which may also be extended for up to 30 days through a subsequent rule. The

area where additional gear restrictions would apply includes the same area as the initial restriction, namely the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia State line (approximately 38° N. lat.) to the COLREGS line at the mouth of the Chesapeake Bay, and portions of the James River, the York River, and the Rappahannock River.

In 2001, NMFS implemented an emergency rule that prohibited the use of all pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and the tidal waters of the James, York, and Rappahannock Rivers from June 19 to July 19. While sea turtles may interact with smaller mesh leaders (less than 12 inch (30.5 cm) stretched mesh), NMFS believes that prohibiting the use of leaders greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers will reduce most of the potential sea turtle entanglements in pound net leaders, and subsequent strandings on Virginia beaches. NMFS chose to restrict the use of leaders with stretched mesh greater than or equal to 8 inches (20.3 cm) in 2001 because there is some information indicating that sea turtles have been entangled in 8 inch (20.3 cm) stretched mesh and because an unprecedented number of loggerheads had already stranded in the spring of 2001 at the time of the emergency rule. While there is evidence to suggest that turtle entanglements may occur in leaders with stretched mesh smaller than 12 inches (30.5 cm), the majority of the scientific information to date indicates that leaders greater than 12 inches (30.5 cm) stretched mesh and leaders with stringers result in the majority of sea turtle pound net entanglements in the Virginia Chesapeake Bay. NMFS expects that prohibiting leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh will be sufficient to protect sea turtles, while minimizing the impacts to the pound net fishery. However, as mentioned previously, should monitoring reveal one sea turtle entangled alive or one sea turtle entangled dead, and NMFS determines that the entanglement contributed to its death, in a pound net leader less than 12 inches (30.5 cm) stretched mesh, NMFS may impose additional restrictions in May or June on an expedited basis.

Classification

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

NMFS has prepared an initial regulatory flexibility analysis that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the **SUMMARY** section. A summary of the analysis follows:

The fishery affected by this proposed rule is the Virginia pound net fishery in the Chesapeake Bay. According to the 2001 VMRC survey data, of the 160 pound net licenses issued in Virginia, where one license is assigned to each pound net, 72 licenses are fishing in the waters potentially affected by this proposed rule. Based upon data from 1999 to 2001, Virginia pound net fishermen earned $84,300 in annual revenues and landed 352,300 pounds of fish annually on average.

The proposed action prohibits pound net leaders with 12 inches (30.5 cm) and greater stretched mesh, as well as those using stringers, from May 8 to June 30. The non-preferred alternative 1 prohibits pound net leaders with 8 inches (20.3 cm) and greater stretched mesh, as well as those using stringers, from May 8 to June 30. The non-preferred alternative 2 prohibits all pound net leaders from May 8 to June 30. Finally, the non-preferred alternative 3 prohibits pound net leaders with greater than 16 inches (40.6 cm) stretched mesh, and requires pound net leaders with stringers to drop the mesh to 9 feet (2.7 m) below mean low water and to space stringer lines at least 3 feet (0.9 m) apart, from May 15 to approximately June 15.

According to VMRC data from 1999 to 2001, 27 fishermen were fishing approximately 64 pound nets from May 8 to June 30. During this period, fishermen earned revenues of $16,700 and landed 69,300 pounds of fish, on average. Prohibiting the use of all pound net leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers from May 8 to June 30 would potentially affect approximately 11 fishermen fishing approximately 24 pound nets. Under the worst case scenario in which fishermen choose not to replace their leaders with nets less than 12 inches (30.5 cm) stretched mesh, but remove their leaders altogether between May 8 and June 30, forgone industry revenues would be $192,000 and the cost to remove and replace pound net leaders would be $16,700, resulting in an industry total of $208,700. A fisherman affected by this proposed rule would on average incur revenue losses of $16,700 from not fishing and a cost of $1,600 to remove and replace leaders on their pound nets in the worst case. A fisherman's annual revenue in this scenario will be reduced by 22 percent on average, given annual revenues of $84,300. If fishermen do replace their leader with one with less than 12 inches (30.5 cm) stretched mesh, and it is operational, then the economic impact of this alternative is $1,600 to remove and replace the leader plus approximately $8,300 for a compliant leader. While there may be additional revenue differences associated with fishing with a smaller leader, those potential differences cannot be determined.

If NMFS determines that this proposed rule should be extended, the economic impacts to the pound net fishery will be greater. Based on the 2001 VMRC data, weekly revenues per fisherman from May 8 to June 30 were $2,200. For every week extended, forgone industry revenues would be $23,100, in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. Therefore, if the extension was until July 15, forgone industry revenues would be approximately $46,200. Given a 2–week extension, a fisherman's annual revenues would now be reduced by 27 percent, versus 22 percent without the extension, under the worst case scenario. If fishermen were able to switch to a smaller mesh size leader and the requirement is extended, no additional cost would be incurred.

Should additional management measures be implemented as a result of information on pound net leader and sea turtle interactions obtained via monitoring, the restrictions may affect either those pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh or all pound net leaders regardless of mesh size in the Virginia waters of the mainstem Chesapeake Bay. If pound net leaders greater than or equal to 8 inches (20.3 cm) are prohibited, approximately 13 fishermen fishing approximately 31 pound nets would be affected. This number of affected participants includes those pound net fishermen with previously restricted leaders. From May 8 to June 30, forgone industry revenues would be $237,400 and the cost to remove and replace pound net leaders would be $20,300, for a total of $257,700 in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. If all pound net leaders, regardless of mesh size, are prohibited, 27 fishermen fishing approximately 64 pound nets would be affected. From May 8 to June 30, forgone industry revenues would be

$444,600 and the cost to remove and replace pound net leaders would be $43,200, for a total of $487,800. The costs to an individual fisherman under either of these additional measures would be the same as the initial gear restriction; a fisherman would on average incur revenue losses of $16,700 from not fishing and a cost of $1,600 to remove and replace leaders on their pound nets between May 8 and June 30 in the worst case scenario.

Taking no action would not have economic consequences, at least in the short term. The impacts of the non-preferred alternative 1 would be the same as those previously described for the prohibition of pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and stringers; approximately 13 fishermen fishing approximately 31 pound nets would be affected by the non-preferred alternative 1. From May 8 to June 30, forgone industry revenues would be $237,400 and the cost to remove and replace pound net leaders would be $20,300, for a total of $257,700 in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. The impacts of the non-preferred alternative 2 would be the same as those previously described for the prohibition of all pound net leaders; approximately 27 fishermen fishing 64 pound nets would be affected by the non-preferred alternative 2. From May 8 to June 30, forgone industry revenues would be $444,600 and the cost to remove and replace pound net leaders would be $43,200, for a total of $487,800. Under the non-preferred alternative 3, 7 fishermen fishing approximately 14 pound nets would be affected. From May 8 to June 30, forgone industry revenues would be $125,000 and the cost to remove and replace pound net leaders would be $11,200, for a total of $136,200 in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. The costs to an individual fisherman under all of the alternatives would be the same; a fisherman would on average incur revenue losses of $16,700 from not fishing and a cost of $1,600 to remove and replace leaders on their pound nets between May 8 and June 30. Under the proposed action, the non-preferred alternative 1 and the non-preferred alternative 3, if fishermen are able to switch to a smaller leader mesh size, and it is operational, the economic impacts would be $1,600 to remove and replace the leader plus approximately $8,300 for a compliant leader.

Dated: March 25, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries.

List of Subjects

50 CFR Parts 222 and 224

Administrative practice and procedure, Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 50 CFR parts 222, 223, and 224 are proposed to be amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 222.102, the definition of ''Pound net leader'' is added in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Pound net leader means a long straight net that directs the fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers are vertical lines in a pound net leader that are spaced a certain distance apart and are not crossed by horizontal lines to form mesh.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.205, paragraphs (b)(14) and (15) are revised and paragraph (b)(16) is added to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED;

(15) Fail to comply with the restrictions set forth in § 223.206(d)(2)(v) regarding pound net leaders; or

(16) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

* * * * *

3. In § 223.206, paragraph (d)(2)(v) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(2) * * *

(v) *Gear requirement—pound net leaders*—(A) *Restrictions on pound net leaders.* During the time period of May 8 through June 30, any pound net leader in the waters described in paragraph (d)(2)(v)(B) of this section must have a mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers. Any pound net leader with mesh measuring 12 inches (30.5 cm) or greater or any pound net leader with stringers must be removed from the waters described in paragraph (d)(2)(v)(B) of this section prior to May 8 and may not be reset until July 1 unless that date is extended by the AA pursuant to § 223.206(d)(2)(v)(C).

(B) *Regulated waters.* The restrictions on pound net leaders described in paragraph (d)(2)(v)(A) of this section apply to the following waters: the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia State line (approximately 37° 55′ N. lat., 75° 55′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.); the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55′ N. lat, 76° 30.40′ W. long.); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.).

(C) *Expedited modification of restrictions and effective dates.* If NMFS receives information that one sea turtle is entangled alive or that one sea turtle is entangled dead, and NMFS determines that the entanglement contributed to its death, in pound net leaders that are in compliance with the restrictions described in paragraph (d)(2)(v)(A) of this section on pound net leaders in the waters identified in (d)(2)(v)(B) of this section, the AA may issue a notification modifying the restrictions on pound net leaders as necessary to protect threatened sea turtles. Such modifications may include, but are not limited to, reducing the maximum allowable mesh size of pound net leaders and prohibiting the

use of pound net leaders regardless of mesh size. In addition, if information indicates that a significant level of sea turtle strandings will likely continue beyond June 30, the AA may issue a final rule extending the effective dates of the restrictions as necessary to protect threatened sea turtles.

* * * * *

PART 224— ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; and 16 U.S.C. 1361 *et seq.*

2. In § 224.104, paragraph (e) is added to read as follows:

§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

* * * * *

(e) Fishermen fishing pound nets in waters identified in § 223.206(d)(2)(v)(B) in compliance with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles in pound net leaders.

[FR Doc. 02–7708 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 61
Friday, March 29, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

RAILROAD RETIREMENT BOARD

20 CFR Parts 260 and 320

RIN 3220–AB03

Requests for Reconsideration and Appeals Within the Board

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to simplify the procedures with respect to requests for reconsideration and appeals within the Board. These amendments clarify the appeals procedures and make the regulations more readable and understandable to the public.

DATES: Comments shall be submitted on or before May 28, 2002.

ADDRESSES: Address any comments concerning this proposed rule to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 260 of the Board's regulations deals generally with administrative review of denials of claims or requests for waiver of overpayments under the Railroad Retirement Act (RRA). Part 320 deals with the same matters under the Railroad Unemployment Insurance Act (RUIA). The Board believes this process can be streamlined without diminishing the rights of claimants in the administrative review process. In addition, the Board believes that part 260 can be made more readable and thus more understandable to the public.

Specifically, the Board proposes to amend § 260.2 to clarify that the procedure applicable to the appeal of a decision denying the crediting of compensation also applies to the crediting of service months under the RRA. Sections 260.3(d) and 320.10(e) are amended to add as possible good cause for failure to file a timely reconsideration request or appeal within the agency that the claimant believed his or her representative had filed such a request or appeal. In order to protect an appellant where he or she may have a problem obtaining appeal forms, §§ 260.5(b), 260.9(b), 320.12, and 320.39 are amended to provide that the right to appeal is protected by the submission of a written request received within the appeal period stating an intent to appeal, if the claimant files the appeal form within the 30-day period following the date of the letter sending the form to the claimant.

A request for waiver of an overpayment must be filed within 60 days of the notice of overpayment. Sections 260.4(c) and 320.11(f) provide that the Board will still consider a request for waiver filed after the 60-day time period, but may proceed to collect the overpayment and that any amounts collected prior to the request for waiver will not be waived.

The amendments amend both parts 260 and 320 to delay recovery of an erroneous payment when a timely appeal is filed with the Bureau of Hearings and Appeals (new paragraphs 260.5(d) and 320.12(c)) and also when a timely appeal is filed with the three-member Board (new paragraphs 260.9(d) and 320.39(b)).

Sections 260.9(d) and (e) clarify that new evidence will ordinarily not be accepted on appeal to the three-member Board from a decision of a hearings officer, but that argument will be accepted. A new § 320.40(d) parallels § 260.9(e). Sections 260.10 and 320.49 provide that the date of postmark shall be considered the date of filing a document with the Board. Finally, a number of nomenclature changes are made to reflect a recent reorganization.

Sections 260.10 and 320.49 are revised to state that as a general rule a document is filed on the day it is received by the Board but that the date of a postmark or other evidence of the date of mailing may be used to establish a filing date. The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required. Information collections associated with this rule have been approved by the Office of Management and Budget under control number 3220–0007.

List of Subjects

20 CFR Part 260

Administrative practice and procedure, Railroad retirement, Reporting and record keeping requirements.

20 CFR Part 320

Administrative practice and procedure, Claims, Railroad unemployment insurance, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II, parts 260 and 320 of the Code of Federal Regulations as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF DISABILITY AND MEDICARE OPERATIONS, BUREAU OF RETIREMENT BENEFITS, BUREAU OF SURVIVOR BENEFITS, OFFICE OF RETIREMENT AND SURVIVOR PROGRAMS, AND THE BUREAU OF RESEARCH AND EMPLOYMENT ACCOUNTS

1. The authority citation for part 260 continues to read as follows:

Authority: 45 U.S.C. 231f; 45 U.S.C. 231g; 45 U.S.C. 355.

2. The heading of part 260 is revised to read as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD

3. The heading of § 260.1, and introductory paragraph (a) of this section are revised to read as follows:

§ 260.1 Initial decisions.

(a) *General.* Claims for benefits shall be adjudicated and initial decisions made by the Board concerning:

* * * * *

4. In §§ 260.1(b), 260.1(d)(1), and (d)(2), remove the words ''Director of the appropriate bureau or office'' and ''appropriate bureau or office'' wherever they appear, and add in their place the word ''Board'.

5. The heading and § 260.2 are revised to read as follows:

§ 260.2 Initial decisions on the amount of service and compensation credited to an employee.

Within 30 days after receipt of a timely request by an employee for amendment with respect to the number of service months and amount of compensation credited to the employee by the Board under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, the Board shall appoint a qualified employee to make a determination with respect to such matter. The employee appointed by the Board shall promptly render a decision. Written notice of such decision shall be communicated to the employee within 30 days after such decision is made. Such decision shall include notification of the employee's right to reconsideration of the initial decision as provided in § 260.3. For purposes of this section, a timely request to amend an employee's record of service months and compensation maintained under the Railroad Retirement Act shall be filed within four years after the date on which the report of service months and compensation was required to be made to the Board by the employee's employer. *See* § 211.16 of this chapter.

6. In § 260.3 the heading, paragraph (a) introductory text, paragraphs (b) through (d), and paragraph (f) are revised to read as follows:

§ 260.3 Request for reconsideration of initial decision.

(a) *Right to file request for reconsideration.* Every claimant shall have the right to file a request for reconsideration of an initial decision described in § 260.1(a) or in § 260.2. *Provided, however,* That:

* * * * *

(b) *Written request for reconsideration.* A written request for reconsideration may be filed with any office of the Board within 60 days from the date on which notice of the initial decision is mailed to the claimant. The claimant shall state the basis for the reconsideration request and provide any additional evidence which is available. No hearing will be provided.

(c) *Right to further review of initial decision.* The right to further review of an initial decision shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the claimant for failing to file a timely request for reconsideration.

(d) *Timely request for reconsideration.* In determining whether the claimant has good cause for failure to file a timely request for reconsideration the bureau director shall consider the circumstances which kept the claimant from filing the request on time and if any action by the Board misled the claimant. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision;

(5) An unusual or unavoidable circumstance existed which demonstrates that the claimant would not have known of the need to file timely or which prevented the claimant from filing in a timely manner; or

(6) The claimant thought that his or her representative had requested reconsideration.

(e) * * *

(f) *Timely review.* The Board shall make every effort to issue a decision upon reconsideration and send a copy of the decision to the claimant within 60 days of the date that the decision for reconsideration is filed.

(g) * * *

7. In § 260.4 the heading is revised, and paragraphs (b) through (i) are revised to read as follows:

§ 260.4 Request for waiver of recovery of an overpayment and/or for reconsideration of an initial erroneous payment decision.

* * * * *

(b) *Request for waiver of recovery and/or reconsideration of an erroneous payment decision and for a personal conference.* A request for reconsideration of an erroneous payment decision must be filed in accordance with § 260.3(b) of this part. A request for waiver of recovery of an overpayment decision and for a personal conference under this section shall be in writing and addressed to the field office of the Board set forth in the initial decision letter or to the Debt Recovery Manager and shall be filed within 60 calendar days from the date on which notice of the overpayment decision was sent to the beneficiary. The beneficiary shall state in the request whether he or she elects to have a personal conference. If the beneficiary does not elect to have a personal conference with respect to his or her request for waiver of recovery or for reconsideration of the overpayment decision, he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(c) *Right to further review of an initial overpayment decision.* The right to further review of an initial overpayment decision shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in § 260.3(b) of this part (60 days) or good cause, as defined in section 260.3(d) of this part, is shown by the beneficiary for failing to file a timely request for reconsideration. Nothing in this section shall be taken to mean that waiver of recovery will not be considered in these cases where the request for waiver is not filed within 60 days, but action to recover the erroneous payment will not be deferred if such a request is not filed within 60 days. Any amounts recovered prior to the date on which the request for waiver as permitted under the preceding sentence is filed shall not be waived under part 255 of this chapter.

(d) *Delay in commencement of recovery of erroneous payment.* Where a timely request for waiver or reconsideration is filed as provided in this section, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such request for waiver or reconsideration has been made and notice thereof mailed to the claimant.

(e) *Impartial review.* Upon receipt of a timely request for personal conference under this section, the Board shall promptly arrange for the selection of a Board employee to conduct a personal conference in the case. The employee designated to conduct the personal conference under this section shall not have had any prior involvement with the initial erroneous payment decision and shall conduct the personal conference in a fair and impartial manner. The employee designated to conduct the personal conference under this section shall promptly schedule a time and place for the personal conference and promptly notify the beneficiary of such. If the beneficiary agrees, the personal conference may be conducted by telephone.

(f) *Personal conference.* The beneficiary shall upon request have the opportunity to review, prior to the personal conference, his or her claim folder and all documents pertinent to the issues raised. A personal conference conducted under this section shall be informal. At the personal conference the beneficiary shall be afforded the following rights:

(1) To present his or her case orally and to submit evidence, whether through witness or documents;

(2) To cross-examine adverse witnesses who appear at the personal conference; and

(3) To be represented by counsel or other person.

(g) *Preparation of recommended decision.* Upon completion of the personal conference the employee who conducts the personal conference shall prepare a summary of the case including a statement of the facts, the employee's findings of fact and law, and a recommended decision.

(h) *Timely review.* The Board shall make every effort to render a decision with respect to the beneficiary's request for reconsideration of the initial erroneous payment determination and/or waiver of recovery and notify the beneficiary of that decision within 60 days of the date that the request for reconsideration and/or waiver is filed or the date that the summary of the case is received from the employee who conducts the personal conference, whichever is later.

(i) *Right to appeal adverse decision.* If the Board renders a decision adverse to the beneficiary, he or she may appeal the decision to the Bureau of Hearings and Appeals, as provided in § 260.5 of this part.

(j) * * *

8. The heading and § 260.5 are revised to read as follows:

§ 260.5 Appeal from a reconsideration decision.

(a) *General.* Every claimant shall have a right to appeal to the Bureau of Hearings and Appeals from any reconsideration decision with which he or she disagrees.

(b) *Appeal from a reconsideration decision.* Appeal from a reconsideration decision shall be made by filing the form prescribed by the Board for such purpose. Such appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the reconsideration decision is mailed to the claimant. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30 day period following the date of the letter sending the form to the claimant.

(c) *Right to review of a reconsideration decision.* The right to review of a reconsideration decision shall be forfeited unless an appeal is filed in the manner and within the time prescribed in this section. However, when a claimant fails to file an appeal with the Bureau of Hearings and Appeals within the time prescribed in this section, the hearings officer may waive this requirement of timeliness. Such waiver shall only occur in cases where the claimant has made a showing of good cause for failure to file a timely appeal. Good cause for failure to file a timely appeal will be determined by a hearings officer in the manner prescribed in § 260.3(d) of this part.

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and Appeals, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Impartial review.* Within 30 days after the claimant has filed a proper appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act on the appeal. The Director of Hearings and Appeals may, if the Bureau of Hearings and Appeals' caseload dictates, appoint a qualified Board employee, other than a hearings officer assigned to the Bureau of Hearings and Appeals, to act as a hearings officer with respect to a case. Such hearings officer shall not have any interest in the parties or in the outcome of the proceedings, shall not have directly participated in the initial decision or the reconsideration decision from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial decision.

(f) *Power of hearings officer to conduct hearings.* In the development of appeals, the hearings officer shall have the power to hold hearings, require and compel the attendance of witnesses by subpoena or otherwise in accordance with the procedures set forth in part 258 of this chapter, administer oaths, rule on motions, take testimony, and make all necessary investigations.

(g) *Evidence presented in support of appeal.* (1) The appellant, or his or her representative, shall be afforded full opportunity to present testimony, or written evidence or exhibits upon any controversial question of fact; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by the appellant or his or her representative, the hearings officer shall provide the appellant or his or her representative with a copy of such evidence. In such event, the appellant shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. The appellant may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

(h) *Submission of written argument in lieu of oral hearings.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

(i) *Conduct of oral hearing.* (1) In any case in which an oral hearing is to be held, the hearings officer shall schedule a time and place for the conduct of the hearing. The hearing shall not be open to the public. The hearings officer shall promptly notify by mail the party or parties to the proceeding as to the time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(2) If the appellant objects to the time or place of the hearing, he or she must notify the hearings officer no later than 5 calendar days before the time set for the hearing. The appellant must state the reason for his or her objection. If at all possible, the request should be in writing. The hearings officer will change the time or place of the hearing if he or she finds there is good cause to do so.

(3) The hearings officer shall rule on any objection timely filed by a party under this paragraph (i) and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the

hearing. The hearings officer also may limit or expand the issues to be resolved at the hearing.

(4) If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the hearings officer a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the hearings officer a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(5) If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

(j) *Record of evidence considered.* The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by the appellant or by his or her duly authorized representative.

(k) *Extension of time to submit evidence.* Except where the hearings officer has determined that additional evidence not offered by the appellant at or prior to the hearing is available, the record shall be closed as of the conclusion of the hearing. The appellant may request an extension of time to submit evidence and the hearings officer will grant the request upon a showing of good cause for failure to have submitted the evidence earlier. The extension shall be for a period not exceeding 30 days.

(l) *Hearing by telephone.* In the discretion of the hearings officer, any hearing required under this part may be conducted by telephone conference. (The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0007)

§ 260.8 [Amended]

9. In § 260.8, remove the word ''bureau'' wherever it appears and add in its place the word ''office''.

10. Section 260.9 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h), by revising paragraph (b), adding a new paragraph (d), and by revising redesignated paragraph (e) and redesignated paragraph (f) to read as follows:

§ 260.9 Final appeal from a decision of the hearings officer.

(b) *Appeal from decision of hearings officer.* Final appeal from a decision of a hearings officer shall be made by the execution and filing of the final appeal form prescribed by the Board. Such appeal must be filed with the Board within 60 days from the date upon which notice of the decision of the hearings officer is mailed to the appellant at the last address furnished by him or her. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, Provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30 day period following the date of the letter sending the form to the claimant.

(c) * * *

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Submission of additional evidence.* Upon final appeal to the Board, the appellant shall not have the right to submit additional evidence. However, the Board may grant a request to submit new evidence where new and material evidence is available that, despite due diligence, was not available before the decision of the hearings officer was issued. The Board may also obtain new evidence on its own motion. Upon admission of new evidence, the Board, at its discretion, may:

(1) Vacate the decision of the hearings officer and remand the case to the Bureau of Hearings and Appeals for issuance of a new decision. The decision of the hearings officer on remand may be appealed to the Board in the manner described in paragraph (b) of this section; or

(2) Return the case to the hearings officer for further consideration with direction to submit a recommended decision to the Board.

(f) *Decision of the Board.* The decision of the Board shall be made upon the record of evidence developed by the hearings officer and any additional evidence admitted pursuant to paragraph (e) of this section. The appellant may submit additional argument in writing with the appeal to the Board. The appellant shall have no right to an oral presentation before the Board except where the Board so permits. Such presentation shall be limited in form, subject matter, length, and time as the Board may indicate to the appellant.

* * * * *

11. The heading, and § 260.10 are revised to read as follows:

§ 260.10 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

12. The authority citation for part 320 continues to read as follows:

Authority: 45 U.S.C. 355 and 362(1).

§ 320.5 Initial determinations.

13. In § 320.5, following the words ''Director of'', remove the words ''Unemployment and Sickness

Insurance'' and add in their place the words ''Policy and Systems''.

14. In § 320.6, the introductory paragraph of § 320.6(b) is revised, a new paragraph (b)(8) is added, paragraphs (d) and (e) are revised, and a new paragraph (f) is added to read as follows:

§ 320.6 Adjudicating office.

* * * * *

(b) *Field offices.* Field offices are authorized to make initial determinations on the following issues relating to eligibility for unemployment or sickness benefits, as the case may be:

* * * * *

(8) Whether a claimant's earnings attributable to days in a period for which he or she has registered for unemployment benefits exceed the amount of the applicable monthly compensation base.

* * * * *

(d) *Director of Operations.* The Director of Operations is authorized to make determinations on all issues of eligibility for unemployment and sickness benefits as set forth in paragraphs (b) and (c) of this section, and on any other issue not reserved to the Director of Policy and Systems by paragraph (e) of this section.

(e) *Director of Policy and Systems.* The Director of Policy and Systems shall adjudicate:

(1) The applicability of the disqualification in section 4(a–2)(iii) of the Railroad Unemployment Insurance Act if the claimant's unemployment results from a strike against a railroad employer by which he or she is employed; and

(2) Whether a plan submitted by an employer or other person or company qualifies as a nongovernmental plan for unemployment, sickness insurance, within the meaning of part 323 of this chapter.

(f) *Debt Recovery Manager.* The Debt Recovery Manager shall adjudicate:

(1) All requests for waiver of recovery of an erroneous payment made under the Railroad Unemployment Insurance Act; and

(2) Offers of compromise of debts arising out of the benefit provisions of the Railroad Unemployment Insurance Act.

15. In § 320.10, paragraph (e) is revised to read as follows:

§ 320.10 Reconsideration of initial determination.

* * * * *

(e) *Timely request for reconsideration.* In determining whether either the claimant or the base-year employer(s) has good cause for failure to file a timely request for reconsideration, the adjudicating office shall consider the circumstances which kept either the claimant or the base-year employer(s) from filing the request on time and whether any action by the Board misled either of them. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing.

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision; or

(5) The existence of an unusual or unavoidable circumstance which demonstrates that either the claimant or the base-year employer(s) would not have known of the need to file timely or which prevented either of them from filing in a timely manner.

(6) The claimant thought that his or her representative had requested reconsideration.

16. In § 320.11, paragraphs (a) and (f) are revised to read as follows, and in paragraphs (d), (e), and (g), remove the words ''Director of Unemployment and Sickness Insurance'', and add in their place the words ''Debt Recovery Manager''; also, in paragraphs (d) and (g), remove the word ''Director'' and add in its place the word ''Manager'' wherever it appears.

§ 320.11 Request for waiver of recovery.

(a) *Time Limitation.* The claimant shall have 60 days from the date of the notification of the erroneous payment determination in which to file a request for waiver, except that where an erroneous payment is not subject to waiver in accordance with § 340.10(e) of this chapter, waiver may not be requested and recovery will not be stayed. Such requests shall be made in writing and be filed by mail or in person at any Board office. The claimant shall, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case. A request solely for reconsideration of an overpayment shall not be considered a request for waiver under this section but shall be treated as a request for reconsideration under § 320.10 of this part.

* * * * *

(f) *Requests made after 60 days.* Nothing in this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 60 days, but action to recovery the erroneous payment will not be deferred if such request is not filed within 60 days, and any amount of the erroneous payment recovered prior to the date on which the request is filed shall not be subject to waiver under part 340 of this chapter. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of an erroneous payment or by selecting a particular method of repaying the debt. However, no waiver consideration shall be given to a debt which is settled by compromise.

* * * * *

17. Section 320.12 is revised to read as follows:

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

(a) Any party aggrieved by a decision under § 320.10 of this part or a claimant aggrieved by a decision under § 320.11 of this part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board for such purpose. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the decision on reconsideration or waiver of recovery was mailed to either a claimant or the base year employer(s). Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's or base-year employer's right to appeal, Provided that the claimant or base-year employer files the appeal form within the later of the 60-day period from the date of the reconsideration decision, or the 30-day period following the date of the Board's letter sending the appeal form to the claimant or base-year employer.

(b) If no appeal is filed within the time limits specified in paragraph (a) of this section, the decision of the adjudicating office under §§ 320.10 or 320.11 of this part shall be considered final and no further review of such decision shall be available unless the hearings officer finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this part.

(c) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and Appeals, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

18. In § 320.25, paragraphs (a) and (b) are revised to read as follows:

§ 320.25 Hearing of appeal.

(a) *Manner of conducting hearing.* The hearing shall be informal, fair, and impartial, and shall be conducted in such manner as to ascertain the substantial rights of the parties. The hearing shall not be open to the public.

(b) *Evidence presented in support of appeal.* (1) Any party, or his or her representative, shall be afforded full opportunity to present evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by a party or his representative, the hearings officer shall provide the parties or their representatives with a copy of such evidence. In such event, any party shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. Any party may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

* * * * *

19. Section 320.28 is revised to read as follows:

§ 320.28 Record of evidence considered.

The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by any party or by his or her duly authorized representative.

20. Section 320.39 is revised to read as follows:

§ 320.39 Execution and filing of appeal to Board from decision of hearings officer.

(a) An appeal to the Board from the decision of a hearings officer shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the hearings officer was mailed to the parties. The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, Provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the appeal form to the claimant. However, when a party fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if along with the final appeal, the party in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the party has good cause for not filing the final appeal form within the time limit prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 320.10(e) of this part in determining if good cause exists.

(b) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

21. The heading of § 320.40 is revised, and a new paragraph (d) is added to read as follows:

§ 320.40 Procedure before the Board on appeal from a decision of a hearings officer.

* * * * *

(d) Any party may submit additional argument in writing with the appeal to the Board. No party shall have the right to an oral presentation before the Board except where the Board so permits. Such presentation may be limited in form, subject matter, length, and time as the Board may indicate to the parties.

22. Section 320.49 is revised to read as follows:

§ 320.49 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

Dated: March 21, 2002.

By Authority of the Board, for the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–7392 Filed 3–28–02; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–167648–01]

RIN 1545–BA50

Amendments to Rules for Determination of Basis of Partner's Interest; Special Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to special rules on determination of basis of a partner's interest under section 705. The proposed regulations are necessary to coordinate sections 705 and 1032.

DATES: Written or electronic comments and requests for a public hearing must be received by June 27, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–167648–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday

between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–167648–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Barbara MacMillan or Rebekah A. Myers, (202) 622–3050; concerning submissions of comments or requests for a hearing, LaNita VanDyke at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2001, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–106702–00, 2001–4 I.R.B. 424) under section 705 of the Internal Revenue Code (Code) in the **Federal Register** (66 FR 315). Those proposed regulations provided guidance on the coordination of sections 705 and 1032 in situations where a corporation acquires an interest in a partnership that holds stock in that corporation, a section 754 election is not in effect with respect to the partnership for the taxable year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. Final regulations for the issues addressed in those proposed regulations are being published elsewhere in this issue of the **Federal Register**. These proposed regulations propose to revise the final regulations contained in § 1.705–2 of 26 CFR part 1 to address remaining issues that Treasury and the IRS considered during the development of the final regulations.

Explanation of Provisions

These proposed regulations provide guidance in situations in which a corporation owns a direct or indirect interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. For reasons similar to those explained in the preamble of the final regulations, in those situations it may be inconsistent with the intent of sections 705 and 1032 to increase the basis of the corporation's partnership interest by the full amount of any gain resulting from the partnership's sale or exchange of the stock which is not recognized by the corporation under section 1032.

Accordingly, the proposed regulations revise the purpose statement of § 1.705–2(a) to take into account situations involving such partnership distributions. The proposed regulations provide a specific rule implementing the revised purpose in single partnership cases. The proposed regulations also revise § 1.705–2(c) to clarify that the tiered partnerships rule applies to situations involving such partnership distributions.

In addition, the proposed regulations clarify that references in the regulations to stock of a corporate partner include any position in stock of a corporate partner to which section 1032 applies.

Proposed Effective Date

The regulations are proposed to apply to sales or exchanges of stock occurring after March 29, 2002.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

2. Section 1.705–1 is amended by revising paragraph (a)(7) to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(7) For basis adjustments necessary to coordinate sections 705 and 1032 in certain situations in which a partnership disposes of stock or any position in stock to which section 1032 applies of a corporation that holds a direct or indirect interest in the partnership, see § 1.705–2.

* * * * *

3. Section 1.705–2 is amended as follows:

1. Paragraph (a) is amended by adding a new sentence after the third sentence.
2. Paragraph (b) is amended by adding paragraph (b)(2).
3. Paragraph (c)(1) is amended by adding a new sentence after the second sentence.
4. Paragraph (d) is added.
5. Paragraph (e) is amended by removing the period at the end of the paragraph and adding a new phrase at the end of the paragraph.

The additions and revision read as follows:

§ 1.705–2 Basis adjustments coordinating sections 705 and 1032.

(a) * * * Similarly, in situations where a section 754 election was not in effect for the year in which a partnership distributes money or other property to another partner and that partner recognizes gain on the distribution, the remaining partners' inside basis and outside basis may not be equal. * * *

* * * * *

(b) * * *

(2) *Required adjustments relating to distributions.* (i) This paragraph (b)(2) applies in situations where a corporation owns a direct or indirect

interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the year in which the partnership made the distribution, a section 754 election had been in effect.

(ii) The provisions of this paragraph (b)(2) are illustrated by the following example:

Example. (i) A, B, and corporation C form partnership PRS. A and B each contribute $10,000 and C contributes $20,000 in exchange for a partnership interest. PRS has no liabilities. PRS purchases stock in corporation C for $10,000, which appreciates in value to $70,000. PRS distributes $25,000 to A in complete liquidation of A's interest in PRS in a year for which an election under section 754 is not in effect. PRS later sells the C stock for $70,000. PRS realizes a gain of $60,000 on the sale of the C stock. C's share of the gain is $40,000. Under section 1032, C does not recognize its share of the gain.

(ii) Normally, C would be entitled to a $40,000 increase in the basis of its PRS interest for its allocable share of PRS's gain from the sale of the C stock, but a special rule applies in this situation. If a section 754 election had been in effect for the year in which PRS made the distribution to A, PRS would have been entitled to adjust the basis of partnership property under section 734(b)(1)(A) by $15,000 (the amount of gain recognized by A with respect to the distribution to A under section 731(a)(1)). See § 1.734–1(b). Under § 1.755–1(c)(1)(ii), the basis adjustment under section 734(b) would have been allocated to the C stock, increasing its basis to $25,000. (where there is a distribution resulting in an adjustment under section 734(b)(1)(A) to the basis of undistributed partnership property, the adjustment is allocated only to capital gain property.)

(iii) If a section 754 election had been in effect for the year in which PRS made the distribution to A, the amount of gain that PRS would have recognized upon PRS's disposition of C stock would be $45,000 ($70,000 minus $25,000 basis in the C stock), and the amount of gain C would have recognized upon PRS's disposition of the C stock (absent the application of section 1032) would be $30,000 (C's share of PRS's gain of $45,000 from the stock sale). Accordingly, upon PRS's sale of the C stock, the increase in the basis of C's interest in PRS is $30,000.

* * * * *

(c)(1) * * * Similarly, if a corporation owns an indirect interest in its own stock through a chain of two or more partnerships, and a partnership in the chain distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, then upon any subsequent sale or exchange of the stock, the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of this section.

* * * * *

(d) *Positions in Stock.* For purposes of this section, stock includes any position in stock to which section 1032 applies.

(e) * * * , except that the fourth sentence of paragraph (a), paragraph (b)(2), and the third sentence of paragraph (c)(1) of this section are applicable with respect to sales or exchanges of stock occurring on or after March 29, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–7650 Filed 3–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 58 and 72

RIN 1219–AB24

Measuring and Controlling Asbestos Exposure

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking; notice of public meetings; notice of close of record.

SUMMARY: We, the Mine Safety and Health Administration (MSHA), are requesting information from the public concerning ways to increase protection to miners when they are working in environments where asbestos is present. We are concerned that miners may be exposed to asbestos at mining operations with the ore bodies containing asbestos. There is also a potential exposure at mine facilities with installed asbestos-containing material which may be disturbed. Miners who are exposed may also bring the substance home on their persons and clothes, and in their automobiles.

Exposure to asbestos can cause asbestosis, mesothelioma, lung cancer, and cancers of the digestive system. A recent report by the U.S. Department of Labor's Office of the Inspector General (OIG) recommended that MSHA lower its existing Permissible Exposure Limit (PEL) for asbestos to a more protective level and address take-home contamination from asbestos. The report also recommended that MSHA use Transmission Electron Microscopy (TEM) instead of Phase Contrast Microscopy (PCM) to analyze fiber samples that may contain asbestos. We intend to use the submitted information to help determine how we should proceed to address these issues.

We are also announcing in this document our intent to hold six (6) public meetings to allow early participation in the rulemaking by interested parties.

DATES: Comments on the advance notice of proposed rulemaking (ANPRM) must be received on or before June 27, 2002.

The public meeting dates and locations are listed in the Public Meetings section below under **SUPPLEMENTARY INFORMATION.**

You do not have to submit a written request to speak. There will be a sign-up sheet at each of the meeting locations. Speakers will speak in the order that they sign in. Speakers may also present information to the MSHA panel for inclusion in the rulemaking record.

The rulemaking record will close June 27, 2002.

ADDRESSES: Comments on the ANPRM may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as pertaining to this ANPRM and sent to: *comments@msha.gov.* Comments by fax must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Comments by mail must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

The public meeting dates and locations are listed in the Public Meetings section below under **SUPPLEMENTARY INFORMATION.**

This notice is available on our Web page at *http://www.msha.gov,* under Statutory and Regulatory Information. We intend to place the public comments on our website within five (5) working days after we receive them.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances; MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Mr. Nichols can be reached at *Nichols-Marvin@msha.gov* (e-mail), (703) 235–1910 (Voice), or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION:

I. Public Meetings

The public meetings will be held on the following dates and locations:

Date	Location	Phone
April 30th	Holiday Inn 1901 Emmet Street Charlottesville, VA 22901	(434) 977–7700
May 2nd	Ramada Inn 164 Fort Couch Road Pittsburgh, PA 15241	(412) 833–5300
May 14th	Days Inn 4212 W Sunset Blvd Spokane, WA 99224	(509) 747–2021
May 16th	Hampton Inn & Suites 800 Mason Street Vacaville, CA 95687	(707) 469–6200
May 29th	Best Western 90 E Main Street Canton, NY 13617	(315) 386–8522
June 12th	Days Inn 701 Hattrick Ave Virginia, MN 55734	(218) 744–2703

The public meetings will begin at 9:00 a.m. and end after the last speaker appears; and in any event, not later than 5:00 p.m. each day.

II. Background

Regulatory History

Our asbestos regulations date to 1967 and are based on the former U.S. Bureau of Mines standard of 5 mppcf (million particles per cubic foot of air). In 1969, the Bureau proposed and finalized a 2 mppcf and 12 fibers/ml (milliliter) standard. In 1970, the Bureau proposed to lower the limit to 5 fibers/ml, which was promulgated in 1974. We issued our current standard of 2 fibers/cc (cubic centimeter) in 1976 for coal mining and 2 fiber/ml in 1978 for metal and nonmetal mining. In 1989, we proposed as part of our Air Quality rulemaking to lower the PEL for asbestos to 0.2 fibers/cc (cubic centimeter), in line with then-current levels promulgated by the Occupational Safety and Health Administration (OSHA) in its Air Contaminants rulemaking. However, an appeals court decision invalidated OSHA's generic rulemaking approach, which had grouped categories of substances with similar properties under a single rulemaking. The Court ruled that the PEL for each substance must be supported by substantial scientific evidence of significant risk of material impairment of health, as if each substance were the subject of a separate substance-specific rule. Since we used an approach similar to OSHA's in our Air Quality proposed rule, we believed our rule would be subject to similar legal scrutiny. For this and other reasons, the air contaminants portion of the Air Quality proposed rule has not been finalized.

In 1994, OSHA promulgated a revised substance-specific asbestos standard that lowered the PEL and the short-term exposure limit to an eight (8) hour time-weighted average limit of 0.1 f/cc of air and to 1.0 f/cc as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected scientific evidence of increased asbestos-related disease risk to asbestos-exposed workers.

MSHA's existing rules at 30 CFR 56.5001(b) and 57.5001(b) states:

> The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. ''Asbestos'' is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term ''asbestos'' as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Asbestos is also covered in an existing coal rule for surface coal mines and surface work areas of underground coal mines under 30 CFR 71.702. The rule states:

> (a) The 8-hour average airborne concentration of asbestos dust to which miners are exposed shall not exceed two fibers per cubic centimeter of air. Exposure to a concentration greater than two fibers per cubic centimeter of air, but not to exceed 10 fibers per cubic centimeter of air, may be permitted for a total of 1 hour each 8-hour day. As used in this subpart, the term asbestos means chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos but does not include nonfibrous or nonasbestiform minerals. (b) The determination of fiber concentration shall be made by counting all fibers longer than 5 micrometers in length and with a length-to-width ratio of at least 3 to 1 in at least 20 randomly selected fields using phase contrast microscopy at 400–450 magnification.

Events Leading up to the Inspector General's Recommendations

In 1980, we requested that the National Institute for Occupational Safety and Health (NIOSH) investigate health problems at vermiculite operations, including one in Libby, Montana. The results of the NIOSH study were published in 1986 and indicated very high occupational exposure prior to 1974 at the Libby operation. The highest exposures were in the mill. In 1974, the mine began to use a wet process to concentrate vermiculite in the mill, and exposures dropped markedly. The study also pointed out an increased risk of lung cancer among the miners.

In November 1999, a Seattle newspaper published a series of articles on the unusually high incidence of asbestos-related illnesses and fatalities among individuals who had lived in Libby, Montana. The miners employed at the vermiculite mine in Libby, which produced approximately 89 percent of the world's supply of vermiculite from 1924 until 1991, were exposed to asbestos through the processing of ore and inadvertently carried the dust home on their clothes and in their personal vehicles, thereby continuing to expose themselves and family members. Because MSHA had jurisdiction over the mine, the OIG undertook an evaluation of our role in the Libby situation.

OIG Findings and Recommendations

The findings and recommendations of the OIG were published in a report dated March 22, 2001. The OIG found that MSHA had conducted regular inspections and personal exposure sampling at the Libby mine. The OIG concluded: ''we do not believe that more inspections or sampling would have prevented the current situation in Libby.'' The report made several recommendations to MSHA, three of which would require rulemaking. The OIG recommended that MSHA: (1) Lower the existing PEL to a more protective level; (2) use a more sensitive method, Transmission Electron Microscopy (TEM), to quantify fibers in our samples, rather than the Phase Contrast Microscopy (PCM) method currently used; and (3) address take-home contamination from asbestos.

Reducing the PEL

A finding of OSHA's 1984 risk assessment was that lowering the TWA PEL from 2 f/cc to 0.2 f/cc reduced the asbestos cancer mortality risk from lifetime exposure from 64 to 6.7 deaths per 1,000 exposed workers, respectively. OSHA estimated that the incidence of asbestosis would be 5 cases per 1,000 workers exposed for a working lifetime under the TWA PEL of 0.2 f/cc. In 1994, OSHA promulgated a revised substance-specific standard that lowered the asbestos PEL to an eight (8) hour time-weighted average limit of 0.1 f/cc of air. It also lowered the short-term exposure limit to 1.0 f/cc as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected scientific evidence of significant, asbestos-related disease risk at existing exposure levels. OSHA's risk assessment also showed that reducing exposure to 0.1 f/cc would further reduce, but not eliminate, significant risk. The excess cancer risk at that level would be reduced to a lifetime risk of 3.4 per 1,000 workers. These data indicate that if we adopt OSHA's asbestos PEL, the level of risk of asbestos-related diseases would be reduced substantially.

Analytical Method

At least two methods are generally used to analyze asbestos in air samples: Phase Contrast Microscopy (PCM) and Transmission Electron Microscopy (TEM). MSHA uses the PCM method. A difference between the two methods is the level of magnification available to identify and count fibers. The PCM method magnifies fibers between 400 and 450 fold whereas the TEM method magnifies fibers 20,000 fold or greater. This increased magnification allows for the mineralogical identification of the fiber and allows a more accurate count of asbestos fibers for purposes of evaluating compliance with the PEL. OSHA uses PCM in their method ID–160 to measure asbestos in air. The NIOSH Manual of Analytical Methods (NMAM) includes asbestos methods 7400 and 7402. Method 7400 is a PCM procedure, equivalent to the OSHA methods. Method 7402 uses TEM to identify fibers. The OIG recommended that MSHA use TEM to analyze asbestos samples.

Take-Home Contamination

Workers can carry hazardous substances home from work on their clothes, bodies, tools, and other items. They can unknowingly expose themselves and their families to these substances, causing various health effects. In our 1989 Air Quality proposed rule, we addressed take-home contamination. As proposed, miners would have been required to wear protective clothing and other personal protective equipment before entering areas containing asbestos. They would have also been required to remove their protective clothing and store them in adequate containers to be disposed of or decontaminated by the operator. This is a common practice when workers are exposed to particularly hazardous materials, such as carcinogens, in carrying out their regular job duties. The OIG recommended that similar requirements be incorporated into a new asbestos rule. OSHA, NIOSH, MSHA, and the Department of Labor OIG have addressed the issue of take-home contamination.

OSHA

The OSHA asbestos standards address protective work clothing and equipment (*i.e.,* provision and use; removal and storage; cleaning and replacement) and hygiene facilities and practices (*i.e.,* change rooms; showers; lunchrooms) to prevent take-home contamination [OSHA: 29 CFR 1910.1001 and 29 CFR 1926.58].

NIOSH

The Workers' Family Protection Act of 1992 (Public Law 102–522, 29 U.S.C. 671a) directed NIOSH to study contamination of workers' homes by hazardous substances (including asbestos) transported from the workplace [NIOSH: ''Protect Your Family: Reduce Contamination at Home.'' DHHS (NIOSH) Publication No. 97–125. NIOSH, Cincinnati, OH (1997)]. The NIOSH study documented cases of home contamination from 28 countries and 36 states in the United States. Reported cases covered a wide variety of materials (including asbestos), industries, and occupations.

NIOSH discussed the prevention of take-home contamination from asbestos [NIOSH (1997)]. The means by which hazardous substances (including asbestos) have reached workers' homes and families include the following: work clothing; tools and equipment; other items taken home from work; the worker's body; cottage industries (*i.e.,* work performed at home); and family visits to the workplace. Asbestos reaching workers' homes has occurred worldwide, resulting in all forms of asbestos disease among workers' family members, including over 100 identified deaths from mesothelioma in the United States.

MSHA

Our 1989 proposed rule on air quality delineated provisions for the use of protective clothing and equipment and hygiene facilities and practices to minimize take-home contamination from asbestos [54 FR 35760, August 29, 1989]. Due to the long-term health risks, carcinogens like asbestos warrant special safety requirements. Under the proposed rule, miners would have had to wear full-body protective clothing (*e.g.,* smocks, coveralls, or long-sleeved shirts and pants and other personal protective equipment) before entering an area in which asbestos-containing ore or material were processed or handled. Upon exiting such areas, miners would also have been required to remove their protective clothing and equipment and have them stored in impervious (*i.e.,* air-tight) containers, which would either be disposed of or decontaminated by the employer. Finally, miners would have had to thoroughly cleanse themselves and shower upon leaving at the end of the workday. NIOSH stated that these measures are effective in reducing or eliminating take-home contamination [1].

Department of Labor Office of the Inspector General

The Department of Labor OIG supported the development and implementation of special safety requirements (*e.g.,* availability, training, and proper use of personal protective clothing and equipment; appropriate storage, disposal, and decontamination of personal protective clothing and equipment; suitable hygiene facilities and practices) for asbestos and vermiculite mining and milling [USDOL: Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana. Report No. 2E–06–620–0002, March 22, 2001. USDOL, Office of the Inspector General, Office of Analysis, Complaints and Evaluations, Washington, DC (2001).]

MSHA's Asbestos Field Sampling and Awareness of Asbestos Hazards

Recently, we adopted new sampling techniques and have increased the scope of sampling for airborne asbestos fibers at mines in an attempt to better determine miners' exposure levels to asbestos. Our efforts have included taking samples at all existing vermiculite, taconite, talc, and other mines to determine whether asbestos is

[1] NIOSH: Report to Congress on Workers' Home Contamination Study Conducted Under The Workers' Family Protection Act (29 U.S.C. 671a). DHHS (NIOSH) Publication No. 95–123. NIOSH, Cincinnati, OH (September 1995).

present and at what levels. Since the Spring of 2000, we have taken almost 900 samples at more than 40 operations employing more than 4,000 miners. A preliminary review and analysis by the Agency indicate few exposures above the OSHA 8-hr TWA of 0.1 f/cc occurred during the sampling period. A final report on the sampling results will be made public as soon as it is available by placing it on our Web site at *http://www.msha.gov,* under the link to Special Initiatives, Asbestos, a single source page. Also, the report will be made part of this rulemaking record.

During those sampling events, we discussed with miners and mine operators the potential hazards of asbestos and the types of preventive measures that could be implemented to reduce exposures. We are encouraging mine operators to comply with the OSHA asbestos PEL of 0.1 f/cc. Our current 8 hour PEL is 20-fold higher than OSHA's. Our intent in using this approach is to educate operators to recognize that a ''standard of care'' based on lower exposure will reduce the potential for illness and liability.

Impact of the Rule

We are assessing both the costs and benefits of intended regulations in accordance with Executive Order 12866. Under the Executive Order, we are to base decisions on the best reasonably obtainable scientific, technical, economic, and other data and information concerning the need for and the consequences of the regulations. We are seeking information and comment on the benefits and costs related to the issues addressed in this ANPRM.

III. Issues

We are seeking any supporting information or data that would help us evaluate whether to lower our asbestos PEL, to revise existing PCM or TEM methods and criteria specifically for the mining industry, to implement safeguards to limit take-home exposures, and the likely impact on benefits and costs of such rulemaking actions. In particular, we encourage the public to respond to the questions posed below.

Please be as specific as possible in your responses to the questions and in suggesting alternatives. When you comment, we request that you include the rationale for the comment rather than a short ''yes'' or ''no'' answer. Please also include specific examples and impact estimates where possible to support your rationale. This will help us to effectively evaluate and analyze your comments.

1. Asbestos PEL

We are considering rulemaking to lower both the eight (8) hour time-weighted average and the short-term exposure limits, and request comments on the most appropriate fiber concentrations to designate in light of their health risk and their technological and economic feasibility.

We seek information, data, and comments on the following:

a. What exposure limit would provide the appropriate level of protection to exposed miners? Would adopting the OSHA limits afford sufficient protection to miners?

b. MSHA's recent field sampling data show that none of the samples collected exceed OSHA's 8 hour time weighted average of 0.1 f/cc when analyzed using the TEM method. Considering the low fiber levels observed, what would be an appropriate agency action?

2. Analytical Method

We are considering the use of TEM rather than PCM to analyze fiber samples that may contain asbestos. We seek information, data, and comment on the following:

c. What is the advantage for MSHA to use TEM to initially analyze airborne fibers collected on all filters?

d. What is the availability and cost of commercial TEM analysis services?

e. Should we measure PEL compliance using TEM?

f. Are there studies which correlate asbestos exposure determined by TEM with incidence of asbestos disease?

g. Are there data comparing PCM to TEM fiber counts from the same filter for the mine environment?

h. What method is most appropriate for MSHA to use (*e.g.,* EPA, ASTM, OSHA, or NIOSH) to analyze bulk samples for asbestos in the mining industry?

3. Take-Home Contamination

We are also considering methods of reducing take-home contamination from asbestos. We specifically request information, data, and comments on the following:

i. How and/or should MSHA require operators to address take-home contamination from asbestos?

j. How should MSHA asbestos regulations provide for any special needs of small mine operators?

k. What technical assistance (*e.g.,* step-by-step instructions, model programs, certification of private programs) should we provide to mine operators when they develop a program to reduce take-home contamination from asbestos?

l. What types of protective clothing are miners currently using when working in areas where asbestos is present?

m. What types of preventive measures (*e.g.,* appropriate disposal of contaminated clothing; hand and face washing; showering) are currently in use when miners leave areas where asbestos may be present?

4. Sampling and Awareness of Asbestos Hazards

We are reviewing the adequacy of our field sampling methods for asbestos and how sampling results are being used, by both MSHA and operators, to protect miners. We specifically request information, data, and comments on the following:

n. How can mineral dust interference be most accurately removed from the samples?

o. Does our current field sampling meet the needs of the mining community?

p. How should mine operators ensure that miners are aware of potential asbestos hazards at the mine site and provide adequate protection?

q. What educational and technical assistance (e.g., step-by-step instructions, model programs) should we provide to mine operators when we develop a program to sample and analyze for asbestos?

r. What other factors, circumstances, or measures should MSHA consider when engineering controls can not reduce asbestos exposure below the PEL?

5. Impact

We anticipate that the benefits of a rulemaking addressing measurement and control of asbestos would be the reduction or elimination of asbestos-related diseases (cancers and asbestosis) arising from exposure to asbestos. We anticipate there will be operator and agency costs associated with lowering our asbestos PEL, reducing take-home contamination, and using TEM to analyze fiber samples.

We request information, data, and comments on the following:

s. How many miners are currently being exposed to asbestos?

t. What engineering controls and personal protective equipment are currently being used to protect miners from exposure to asbestos and to prevent take-home contamination? What are the costs of these engineering controls and personal protective equipment?

u. What would be the benefits of a rule that would reduce exposure to asbestos?

v. What would be the costs of such a rule?

Dated: March 22, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–7467 Filed 3–26–02; 12:05 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA22

Amendments to the Bank Secrecy Act Regulations; Requirement That Casinos and Card Clubs Report Suspicious Transactions; Request for Additional Comments

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Proposed regulations: Reopening of comment period and request for additional comments.

SUMMARY: FinCEN is soliciting additional comments concerning the proposed standard for the reporting by casinos and card clubs of suspicious activity. To allow the submission of such comments, it is re-opening for 60 additional days the comment period for the relevant notice of proposed rulemaking.

DATES: Additional written comments about the reporting standard must be received on or before May 28, 2002.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, Attention: NPRM—Casino SAR Rule. (Comments may also be submitted by electronic mail to the following Internet address: *''regcomments@fincen.treas.gov''* with the caption in the body of the text ''Attention: NPRM—Casino SAR Rule.'') For additional instructions and terms for the submission of comments, see Supplementary Information under the heading ''IV. Submission of Comments'' in the notice of proposed rulemaking, published on May 18, 1998, about casino reporting of suspicious transactions. 63 FR 27230, 27237 (May 18, 1998).

FOR FURTHER INFORMATION CONTACT: Peter G. Djinis, Executive Assistant Director (Regulatory Policy), FinCEN, (703) 905–3930; Judith Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION: On May 18, 1998, FinCEN issued a notice of proposed rulemaking, 63 FR 27230 (the ''Notice''), under the terms of the Bank Secrecy Act,[1] concerning the reporting by casinos [2] of suspicious transactions.[3] The comment period for the Notice ended on September 15, 1998.

FinCEN received 18 comment letters on the Notice. In addition, FinCEN held four public meetings on the Notice during the comment period. The meetings were held in New Orleans, Louisiana on July 14, 1998; Chicago, Illinois on July 23, 1998; Scottsdale, Arizona on August 6, 1998; and New York City, New York on September 9, 1998.

One of the primary issues raised in the written comments and public meetings was the nature of the proposed standard for reporting of suspicious transactions. As explained more fully below, FinCEN has determined to reopen the comment period with respect to that issue.

I. The Proposed Reporting Standard.

The rule proposed in the Notice would require a casino to report a transaction to the Treasury Department, if that transaction is:

conducted or attempted by, at, or through a casino, and involves or aggregates at least $3,000 in funds or other assets, *and the casino knows, suspects, or has reason to suspect* that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or any other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.[4] (Emphasis added.)

The proposed reporting standard (except for differing dollar thresholds) is the same as that adopted by the Treasury Department for suspicious transaction reporting by depository institutions, money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks. *See* 31 CFR 103.18(a)(2), relating to suspicious activity reporting by banks, and 31 CFR 103.20(a)(2), relating to suspicious activity reporting by certain money services businesses.[5] It is also the same reporting standard that the Treasury Department proposed in a Notice of Proposed Rulemaking relating to extension of the requirement to report suspicious activity to brokers and dealers in securities.[6]

Commenters on the Notice have argued strongly, however, that requiring reporting if a casino ''has reason to suspect'' that a transaction falls into one of the three categories of reportable transaction,[7] is inappropriate, because the ''fast-paced, entertainment-filled environment'' at casinos is vastly different from the environment of most other financial institutions. They assert that customers in a casino cannot be relied upon to act in ways consistent with any particular norm of financial transaction, but may be motivated in the way they transfer and wager funds by factors such as gambling strategies, intuition, or gambling superstitions. The wider range of motivations reflected in

[1] Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–59, and 31 U.S.C. 5311–5330. The Bank Secrecy Act authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures. Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, P.L. 107–56.

[2] In this document, the term ''casino'' when used alone, includes a reference both to casinos and to card clubs, as the latter term is defined in 31 CFR 103.11(n)(8), unless the context clearly indicates otherwise. See 31 CFR 103.11(n)(7)(iii).

[3] The Notice also proposed related changes to the provisions of 31 CFR 103.54 (subsequently re-numbered as 103.64) relating to casino compliance programs.

[4] *See* proposed 31 CFR 103.21(a)(2)(i)–(iii), 63 FR at 27239 (May 18, 1998).

[5] Banks have been required to file suspicious activity reports since April 1, 1996. The suspicious transaction reporting rules for depository institutions were renumbered as part of the rulemaking relating to the reporting of suspicious transactions by certain money services businesses. *See* 65 FR 13683 (March 14, 2000). The suspicious transaction reporting rules for the categories of money services businesses described in the text took effect on January 1, 2002.

[6] See 66 FR 67670 (December 31, 2001).

[7] Because the standard requires reporting when a financial institution has ''reason to suspect'' that a transaction is suspicious, the standard is referred to in the comments and in this document as an ''objective reporting standard.''

the actions of casino customers, in turn, will multiply the difficulties that casinos face in seeking to determine which transactions are truly suspicious. The commenters thus assert that casinos should be subject to a standard in which reporting of suspicious activities is required only if a casino ''knows, suspects, or, *in the judgment of the casino,* has reason to suspect'' that a transaction is suspicious. (Emphasis added.) [8]

FinCEN is concerned that the commenters may have misperceived the meaning of the reporting standard proposed in the Notice. A ''reason to suspect'' standard takes as its baseline the practical experience and expertise of industry officials in evaluating risks in the enterprise involved. Financial institutions (and different institutions within a particular segment of the financial industry) operate in different ways and under different conditions, and the self-adjusting quality of a ''reason to suspect'' standard is what makes that standard sufficiently flexible to apply, for example, to international or money center banks, community banks, non-bank money transmitters, and sellers of money orders.

Casino operations, themselves, have different parts. Transactions that take place at a casino's cage—where chips and tokens are purchased or redeemed, customers' deposit and credit accounts are opened or settled, checks are purchased or cashed, and funds transfers are initiated or received—are little different (other than for the use of gambling chips and tokens) than the sorts of transactions that can take place at a teller's window in a depository institution. Transactions on a gaming floor (such as wagering of currency or purchasing of currency for chips), take place in a far different environment. But a ''reason to suspect'' standard adjusts, by its very nature, to the different sorts of activities and the different environments in which financial transactions take place, whether within one financial institution or as between financial institutions. Whether a casino has reason to suspect that a transaction or series of transactions is suspicious under the terms of the rule may, and likely will, involve far different considerations for wagering activity (for precisely the reasons the commenters cite) than for transactions at a casino cage or a slot booth. But that does not mean that it is inappropriate to ask that an institution meet such a standard in evaluating the (different) relevant facts.

Commenters also argued that language protecting a casino's judgment was absolutely necessary to bar after-the-fact determinations by enforcement officials about a casino's decision not to report a transaction. They suggested that casinos would find it necessary, in order to defend their judgment, to document their reasons for not filing a suspicious activity report with respect to transactions that meet the reporting threshold. [9]

Again, FinCEN believes that the commenters may have misperceived the ''reason to suspect'' standard. In adopting the rule requiring the reporting of suspicious transactions by depository institutions, FinCEN stated that it anticipated that, ''in general the area for inquiry in the case of failure to report will center upon both the facts of the particular failure and what the failure indicates about the bank's compliance systems and attention to the Bank Secrecy Act rules in general.'' 61 FR 4326, 4330 (February 5, 1996). The same logic applies to all categories of financial institutions.

The determinative question, in all cases, is whether a ''reason to suspect'' existed at the time and in the circumstances, in which the transaction occurred whenever and by whomever the question is asked.[10] By way of contrast, the standard proposed by the commenters would appear to leave the decision whether to file a suspicious activity report entirely to the discretion of the casino and to preclude altogether review of the casino's compliance with any reporting requirement, unless the government were able to show that the casino's employees possessed actual knowledge or suspicion that they were witnessing or participating in money laundering or structuring of transactions, or in other types of financial crime.

The proposed rule asks a casino to exercise due diligence in evaluating the facts before the institution and seeking to identify those transactions that should appear suspicious in light of the particular circumstances and industry experience.[11] The corresponding rules ask the same of banks and money services businesses.

Casinos understand their business and the nature of the gaming industry. The extent to which casinos carefully monitor gaming activities for loss-protection and other business purposes is well documented. Within that context, a duty to investigate potentially suspicious activity further—to exercise due diligence—would appear no more or less difficult for a casino than for a bank or money transmitter.

As a final note, the rule that Treasury ultimately promulgates requiring casinos to file suspicious transaction reports will apply to casinos located in Nevada. Since May 1985, casinos located in Nevada have been exempt from certain Bank Secrecy Act requirements pursuant to a memorandum of agreement between the Treasury Department and the State of Nevada on behalf of Nevada casinos under 31 CFR 103.45(c)(1) (subsequently renumbered as 103.55).[12] By its terms, the memorandum of agreement only exempts Nevada casinos from the BSA requirements applicable to casinos at the time it was signed, including currency transaction reporting and recordkeeping requirements. Treasury's proposal to extend a requirement to report suspicious activity to casinos would therefore not be covered by the exemption contained in the memorandum of agreement.

In order to obtain an exemption from a Bank Secrecy Act requirement, a state must subject the class of transactions for which the exemption is sought to requirements that the Secretary of the Treasury deems ''substantially similar'' to those promulgated by Treasury under Title 31 with respect to the class of transactions.[13] In addition, there must be adequate provision for enforcement of the class of transactions to be exempted. If Treasury ultimately adopts

[8] Regulations of the Nevada Gaming Control Board, requiring suspicious transaction reporting by casinos in that state, under the Nevada state regulatory system, adopt the ''subjective standard'' sought by the commenters.

[9] Commenters predicted substantial overreporting in an attempt by casinos to avoid later questions, and some commenters even suggested that casinos might file suspicious activity reports with respect to all transactions that exceeded the reporting threshold.

[10] The determination whether a transaction at a casino cage or slot booth, or on the gaming floor, requires reporting will naturally require analysis and judgment on the part of casino personnel, in light of their experience and industry experience. But it is not the purpose of the proposed rule to ''second guess'' casino executives; in fact, articulation of a ''reason to suspect'' standard can as easily restrict government flexibility in challenging casino officials' judgments with the benefit of hindsight, as it can open questions about whether a particular casino's judgments, on particular facts, met that standard.

[11] The rule proposed in the Notice specifically requires the incorporation of considerations relating to the reporting of suspicious transactions into a casino's Bank Secrecy Act compliance programs. *See* proposed 31 CFR 103.54(a)(2)(ii) and (a)(2)(v)(B), 63 FR 27230, 27236–37, 27240. (Section 103.54 was subsequently renumbered as 103.64)

[12] 31 CFR 103.55(c)(1) provides that the Secretary of the Treasury may grant exemptions to the casinos in any state ''whose regulatory system substantially meets the reporting and recordkeeping requirements of this part.''

[13] *See* 31 U.S.C. 5318(a)(5), which was added to the BSA by section 410 of the Money Laundering Suppression Act, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub.L. 103–325 (September 23, 1994).

a suspicious transaction reporting requirement that incorporates an objective reporting standard, the difference between such a standard and a subjective reporting standard, a distinction with respect to which commenters have expressed considerable concern, would be a significant factor in determining whether Nevada's suspicious transaction reporting rule would be ''substantially similar'' to Treasury's rule. For this reason, we are formally encouraging Nevada casinos to comment on the ''reason to suspect'' standard contained in the Notice.

II. Request for Additional Comments

FinCEN is reopening the comment period for the reporting of suspicious transactions by casinos, in order to solicit responses to the discussion of the ''reason to suspect'' standard that appears above, and additional views about the best way to apply to casinos the due diligence obligations inherent in suspicious transaction reporting.

Specifically FinCEN requests additional comments on the following issues:

(1) The application of the objective ''reason to suspect'' standard (as proposed in the Notice and as further explained in this document) to the casino industry, given the self-adjusting nature of such a standard. In particular, FinCEN invites comment about whether it would be helpful to add language to the rule or preamble explaining that the objective standard necessarily takes into account differences in the operating environment in various parts of a financial institution (for example, as between casino cage and gaming floor activities).

(2) The ability of casinos to satisfy a due diligence-based standard, especially given the nature of existing casino risk management and customer monitoring practices.

(3) The extent to which the due diligence notion addresses concerns about possible subsequent review by the government of a financial institution's decisions that a report is (or is not) required in particular cases.

(4) The meaning of the phrase ''in the judgment of the casino, has reason to suspect,'' proposed by several commenters, and the result of its application.

Dated: March 22, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–7558 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[0720–AA67]

Collection From Third Party Payers of Reasonable Charges for Health Care Services

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is to implement provisions of the National Defense Authorization Act for Fiscal Year 2000, which amended the statutory obligation of the third party payers to replace the ''reasonable cost'' basis of the Third Party Collection Program with a ''reasonable charge'' basis, and also authorized methods to be used for the computation of reasonable charges. We propose to adopt the ''reasonable charge'' basis and generally to use CHAMPUS payment rates as the reasonable charges under the Program. This rule also implements the provisions added by the National Defense Authorization Act for Fiscal Year 2002 related to the charging of fees for care to civilians who are not covered beneficiaries.

DATES: Comments must be received by May 28, 2002.

ADDRESSES: Send comments to Lt. Col. Rose Layman, Uniform Business Office, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, Resource Management, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Rose Layman at (703) 681–8910.

SUPPLEMENTARY INFORMATION: Our goal is to publish a final rule in early 2002 with an effective date of April 1, 2002. In keeping with our intention to adopt a rate structure more consistent with the civilian health insurance industry practice, this rule proposes an itemized methodology for outpatient services. A combination of our current rate methodology, based on cost, and new methodology based on CHAMPUS payment rates will be used.

Due to the extensive system and practices required in over 500 facilities, a phased-in approach to our methodology will be applied. The current inpatient methodology of an all-inclusive DRG-based rate (including professional charges) will continue to be utilized for FY 02. In FY 03, we will begin to bill separately for hospital charges (using a DRG-based schedule of costs) and professional charges (using the CPT–4 based CHAMPUS Maximum Allowable Charges (CMAC) rates). Our program changes in FY 02 will focus on outpatient services.

Our analysis indicates that the transition from reasonable costs to reasonable charges will most likely not increase the amount of money collected for the services provided. We undertook an analysis comparing our current rate structure based on cost data with the charges based on the CMAC rates. An initial sample of 500 patient encounters was obtained from Military Treatment Facilities across all three Services from various regions. These patient encounters were priced with the National average CMAC pricing scale as well as the current all-inclusive methodology. The average of both pricing schemes found the totals to be within a ten-dollar range of each other. Thus, we anticipate billing at approximately the same aggregate level. The benefit of the change in methodology is that each bill will be much more appropriate for the actual services provided to the patient and will be itemized in the manner to which the health insurance industry is accustomed. Therefore, although it is not based on actual DoD costs (because our cost accounting systems do not have patient level specification), we believe adoption of the CMAC rates is more representative of actual costs specific to the services provided to a patient than is our current aggregated clinic visit rate.

The format of line-item charges will more closely resemble that currently used by facilities of the Department of Veteran's Affairs. Under this rule, DoD facilities will bill for the majority of outpatient care utilizing the Health Care Common Procedure Coding System with individual charges associated with these codes. Third party payers who receive claims from both entities, will now see greater similarity between the DoD and VA. However, the rates and business rules utilized by these two agencies will vary, with the VA's usual and customary rate based on independent calculation, and the DoD's rate based on the long-established CHAMPUS methodology.

This approach is also consistent with the newly enacted 10 U.S.C. 1079b, which reaffirms the authority of the Secretary of Defense to ''implement procedures under which a military medical treatment facility may charge civilians who are not covered beneficiaries (or their insurers) fees representing the costs, as determined by the Secretary, of trauma and other

medical care provided to such civilians.'' It is the Secretary's determination that the CHAMPUS payment rates best represent the costs of providing care to all patients in Military Treatment Facilities.

Rulemaking Procedures

We have reviewed this proposed rule in accordance with the provisions of Executive Order 12866, the Congressional Review of Agency Rulemaking Act (5 U.S.C. 801–808), and the Regulatory Flexibility Act (5 U.S.C. 601–612).

This rule has been designated as significant rule and has been reviewed by the Office Management and Budget as required under the provisions of Executive Order 12866. It is not an economically significant action or a major rule, and it would not have a significant impact on a substantial number of small entities.

This rule does this rule affect matter addressed by the Unfunded Mandates Reform Act (Pub. L. 104–4) or Executive Order 13132 concerning Federalism. Also, this proposed rule does not involve new information collection requirements under the Paperwork Reduction Act (44 U.S.C. chapter 35). This proposed rule will align DoD closer to civilian industry practices for health care billing and collections; it will have no significant economic or regulatory impact on any entity.

This is a proposed rule. Public comments are invited.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance.

For reasons set forth in the preamble, the Department of Defense proposes to amend 32 CFR Part 220 as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE CHARGES FOR HEALTHCARE SERVICES

1. The authority citation for 32 CFR part 220 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095.

2. Section 220.1 is revised to read as follows:

§ 220.1 Purpose and applicability.

(a) This part implements the provisions of 10 U.S.C. 1095, 1097b(b), and 1079b. In general, 10 U.S.C. 1095 establishes the statutory obligation of third party payers to reimburse the United States the reasonable charges of healthcare services provided by facilities of the Uniformed Services to covered beneficiaries who are also covered by a third party payer's plan. Section 1097b(b) elaborates on the methods for computation of reasonable charges. Section 1079b addresses charges for civilian patients who are not normally beneficiaries of the Military Health System. This part establishes the Department of Defense interpretations and requirements applicable to all healthcare services subject to 10 U.S.C. 1095, 1097b(b), and 1079b.

(b) This part applies to all facilities of the Uniformed Services; the Department of Transportation administers this part with respect to facilities of the Coast Guard, not the Department of Defense.

(c) This part applies to pathology services provided by the Armed Forces Institute of Pathology. However, in lieu of the rules and procedures otherwise applicable under this part, the Assistant Secretary of Defense (Health Affairs) may establish special rules and procedures under the authority of 10 U.S.C. 176 and 177 in relation to cooperative enterprises between the Armed Forces Institute of Pathology and the American Registry of Pathology.

3. Section 220.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 220.2 Statutory obligation of third party payer to pay.

(a) *Basic rule.* Pursuant to 10 U.S.C. 1095(a)(1), a third party payer has an obligation to pay the United States the reasonable charges for healthcare services provided in or through any facility of the Uniformed Services to a covered beneficiary who is also a beneficiary under the third party payer's plan. The obligation to pay is to the extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

(b) *Application of cost shares.* If the third party payer's plan includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount the United States may collect from the third party payer is the reasonable charge for the care provided less the appropriate deductible or copayment amount.

* * * * *

4. Section 220.4 is amended by revising paragraph (c)(2)(iii) to read as follows:

§ 220.4 Reasonable terms and conditions of health plan permissible.

* * * * *

(c) * * *

(2) * * *

(iii) Such provisions are not permissible if they would not affect a third party payer's obligation under this part. For example, concurrent review of an inpatient hospitalization would generally not affect the third party payer's obligation because of the DRG-based, per-admission basis for calculating reasonable charges under § 220.8(a) (except in long stay outlier cases, noted in § 220.8(a)(4)).

* * * * *

5. Section 220.8 is amended by revising the section heading and paragraphs (a), (b), (c), (e), (f), (h), (i), and (j) and by removing paragraphs (k) and (l) to read as follows:

§ 220.8 Reasonable charges.

(a) *In general.* (1) Section 1095(f) and section 1097b(b) both address the issue of computation of rates. Between them, the effect is to authorize the calculation of all third party payer collections on the basis of reasonable charges and the computation of reasonable charges on the basis of per diem rates, all-inclusive per-visit rates, diagnosis related groups rates, rates used by the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) program to reimburse authorized providers, or any other method the Assistant Secretary of Defense (Health Affairs) considers appropriate and establishes in this part. Such rates, representative of costs, are also endorsed by section 1079b(a).

(2) The general rule is that reasonable charges under this part are based on the rates used by CHAMPUS under 32 CFR 199.14 to reimburse authorized providers. There are some exceptions to this general rule, as outlined in this section.

(b) *Inpatient hospital and professional services on or after January 1, 2003.* Reasonable charges for inpatient hospital services provided on or after January 1, 2003, are based on the CHAMPUS Diagnosis Related Group (DRG) payment system rates under 32 CFR 199.14(a)(1). Certain adjustments are made to reflect differences between the CHAMPUS payment system and the Third Party Collection Program billing system. Among these are to include in the inpatient hospital service charges adjustments relating to direct medical education and capital costs (which in the CHAMPUS system are handled as annual pass through payments). Additional adjustments are made for long stay outlier cases. Like the CHAMPUS system, inpatient professional services are not included in the inpatient hospital services charges, but are billed separately in accordance with paragraph (e) of this section.

(c) *Inpatient hospital and inpatient professional services before January 1, 2003.* (1) *In general.* Prior to January 1,

2003, the computation of reasonable charges for inpatient hospital and professional services is reasonable costs based on diagnosis related groups (DRGs). Costs shall be based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The average charge per case shall be published annually as an inpatient standardized amount. A relative weight for each DRG shall be the same as the DRG weights published annually for hospital reimbursement rates under CHAMPUS pursuant to 32 CFR 199.14(a)(1).

(2) *Standardized amount.* The standardized amount is determined by dividing the total costs of all inpatient care in all military treatment facilities by the total number of discharges. This produces a single national standardized amount. The Department of Defense is authorized, but not required by this part, to calculate three standardized amounts, one for large urban, other urban/rural, and overseas area, utilizing the same distinctions in identifying the first two areas as is used for CHAMPUS under 32 CFR 199.14(a)(1). Using this applicable standardized amount, the Department of Defense may make adjustments for area wage rates and indirect medical education costs (as identified in paragraph (c)(4) of this section), producing for each inpatient facility of the Uniformed Services a facility-specific ''adjusted standardized amount'' (ASA).

(3) *DRG relative weights.* Costs for each DRG will be determined by multiplying the standardized amount per discharge by the DRG relative weight. For this purpose, the DRG relative weights used for CHAMPUS pursuant to 32 CFR 199.14(a)(1) shall be used.

(4) *Adjustments for outliers, area wages, and indirect medical education.* The Department of Defense may, but is not required by this part, to adjust charge determinations in particular cases for length-of-stay outliers (long stay and short stay), cost outliers, area wage rates, and indirect medical education. If any such adjustments are used, the method shall be comparable to that used for CHAMPUS hospital reimbursements pursuant to 32 CFR 199.14(a)(1)(iii)(E), and the calculation of the standardized amount under paragraph (a)(2) of this section will reflect that such adjustments will be used.

(5) *Identification of professional and hospital charges.* For purposes of billing third party payers other than automobile liability and no-fault insurance carriers, inpatient billings are subdivided into two categories:

(i) Hospital charges (which refers to routine service charges associated with the hospital stay and ancillary charges).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

* * * * *

(e) *Reasonable charges for professional services.* The CHAMPUS Maximum Allowable Charge (CMAC) rate table, established under 32 CFR 199.14(h), is used for determining the appropriate charge for professional services in an itemized format, based on Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS) methodology. This applies to outpatient professional charges only prior to January 1, 2003, and to all professional charges, both inpatient and outpatient, after January 1, 2003.

(f) *Miscellaneous Healthcare services.* Some special services are provided by or through facilities of the Uniformed Services for which reasonable charges are computed based on reasonable costs. Those services are the following:

(1) The charge for ambulance services is based on the full costs of operating the ambulance service.

(2) Charges for care in the Burn Center at Brooke Army Medical Center are based on a per diem rate for the full costs of these services until October 1, 2002, at which time charges will move over to DRG basis as stated.

(3) Charges for dental services (including oral diagnosis and prevention, periodontics, prosthodontics (fixed and removable), implantology, oral surgery, orthodontics, pediatric dentistry and endodontics) will be based on a full cost of the dental services.

(4) With respect to services provided prior to January 1, 2003, reasonable charges for anesthesia services will be based on an average DoD cost of service in all Military Treatment Facilities. With respect to services provided on or after January 1, 2003, reasonable charges for anesthesia services will be based on an average cost per minute of service in all Military Treatment Facilities.

(5) The charge for immunizations, allergin extracts, allergic condition tests, and the administration of certain medications when these services are provided in a separate immunizations or shot clinic, are based on CHAMPUS prevailing rates in cases in which such rates are available, and in cases in which such rates are not available, on the average full cost of these services, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each immunization, injection or medication administered.

(6) The charges for pharmacy, durable medical equipment and supplies are based on CHAMPUS prevailing rates in cases in which such rates are available, and in cases in which such rates are not available, on the average full cost of these items, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each item provided.

(7) Charges for aeromedical evacuation will be based on the full cost of the aeromedical evacuation services.

* * * * *

(h) *Special rule for TRICARE Resource Sharing Agreements.* Services provided in facilities of the Uniformed Services in whole or in part through personnel or other resources supplied under a TRICARE Resource Sharing Agreement under 32 CFR 199.17(h) are considered for purposes of this part as services provided by the facility of the Uniformed Services. Thus, third party payers will receive a claim for such services in the same manner and for the same charges as any similar services provided by a facility of the Uniformed Services.

(i) *Alternative determination of reasonable charges.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar aggregate groups of services that is less than the charges prescribed under this section may, with the agreement of the facility of the Uniformed Services (or other authorized representatives of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate for those services. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan. This paragraph does not apply to cases covered by § 220.11.

(j) *Exception authority for extraordinary circumstances.* The Assistant Secretary of Defense (Health Affairs) may authorize exceptions to this section, not inconsistent with law, based on extraordinary circumstances.

6. Section 220.10 is amended by revising paragraph (c)(1) to read as follows:

§ 220.10. Special rules for Medicare supplemental plans.

* * * * *

(c) *Charges for health care services other than inpatient deductible amount.*

(1) The Assistant Secretary of Defense (Health Affairs) may establish special charge amounts for Medicare supplemental plans to collect reasonable charges for inpatient and outpatient copayments and other services covered by the Medicare supplemental plan. Any such schedule of charge amounts shall:

* * * * *

7. Section 220.12 is amended by revising paragraph (a)(1) to read as follows:

§ 220.12. Special rules for preferred provider organizations.

(a) *Statutory requirement.* (1) Pursuant to the general duty of third party payers to pay under 10 U.S.C. 1095(a)(1) and the definitions of 10 U.S.C. 1095(h), a plan with a preferred provider organization (PPO) provision or option generally has an obligation to pay the United States the reasonable charges for healthcare services provided through any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under the plan.

* * * * *

8. Section 220.13 is amended by revising paragraph (a) to read as follows:

§ 220.13 Special rules for workers' compensation programs.

(a) *Basic rule.* Pursuant to the general duty of third party payers under 10 U.S.C. 1095(a)(1) and the definitions of 10 U.S.C. 1095(h), a workers' compensation program or plan generally has an obligation to pay the United States the reasonable charges for healthcare services provided in or through any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under a workers' compensation program due to an employment related injury, illness, or disease. Except to the extent modified or supplemented by this section, all provisions of this part are applicable to any workers' compensation program or plan in the same manner as they are applicable to any other third party payer.

* * * * *

9. Section 220.14 is amended by revising the definitions *Covered beneficiaries* and *Third party payer* to read as follows:

§ 220.14 Definitions.

* * * * *

Covered beneficiaries. Covered beneficiaries are all healthcare beneficiaries under chapter 55 of title 10, United States Code, except members of the Uniformed Services on active duty (as specified in 10 U.S.C. 1074(a)). However, for purposes of § 220.11, such members of the Uniformed Services are included as covered beneficiaries.

* * * * *

Third party payer. A third party payer is any entity that provides an insurance, medical service, or health plan by contract or agreement. It includes but is not limited to:

(1) State and local governments that provide such plans other than Medicaid.

(2) Insurance underwriters or carriers.

(3) Private employers or employer groups offering self-insured or partially self-insured medical service or health plans.

(4) Automobile liability insurance underwriter or carrier.

(5) No fault insurance underwriter or carrier.

(6) Workers' compensation program or plan sponsor, underwriter, carrier, or self-insurer.

(7) Any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for healthcare services or products.

* * * * *

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7539 Filed 3–28–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–013]

RIN 2115–AA97

Safety Zone: Groton Long Point Yacht Club Fireworks Display, Groton, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Groton Long Point Yacht Club Fireworks Display, off Groton Long Point, CT. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Long Island Sound in the vicinity of Groton Long Point, Groton, CT.

DATES: Comments and related material must reach the Coast Guard on or before April 29, 2002.

ADDRESSES: You may mail comments and related material to Marine Events, Coast Guard Group/Marine Safety Office Long Island Sound, Command Center, 120 Woodward Ave., New Haven, CT 06512. Coast Guard Group/Marine Safety Office Long Island Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM2 Ryan Peebles, Group Operations Petty Officer, Coast Guard Group/MSO Long Island Sound (203)468–4408.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to Coast Guard Group/MSO Long Island Sound at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a temporary safety zone for the Groton Long Point Yacht Club Fireworks Display off Groton Long Point in Long Island Sound. The safety zone encompasses all waters of Long Island Sound within a 600-foot radius of approximate position, 41°18′05″ N, 072°02′08″ W (NAD 1983). The proposed safety zone is intended to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety

zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels.

Discussion of Proposed Rule

The proposed safety zone is for the Groton Long Point Yacht Club Fireworks Display held off Groton Long Point, Groton, CT. This event will be held on July 20, 2002. In the event of inclement weather, the event will be held on July 21, 2001. The proposed safety zone will be in effect from 9:15 p.m. until 10:30 p.m. on the date of the event. The proposed safety zone encompasses all waters of Long Island Sound within a 600-foot radius of approximate position 41°18′05″ N, 071°02′08″ W (NAD 1983).

Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts. Marine traffic will be allowed to transit around the safety zone at all times. Vessels will not be precluded from mooring at or getting underway from recreational or commercial piers in the vicinity of the zone. No vessel may enter the safety zone without permission from the Captain of the Port, Long Island Sound.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory planning and review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed safety zone would temporarily close a portion of Long Island Sound to vessel traffic. However, the impact of this regulation is expected to be minimal for the following reasons: the event is of limited duration; vessels are not precluded from getting underway, or mooring at, public or private facilities in the vicinity of the event; advance advisories will be made to the maritime community; and marine traffic may still transit around the zone during the event.

The size of this safety zone was determined using National Fire Protection Association standards and the Captain of the Port Long Island Sound Standing Orders for 6-inch mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Long Island Sound during the time this zone is activated. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: the event is of limited duration; vessels are not precluded from getting underway, or mooring at, public or private facilities in the vicinity of the event; advance advisories will be made to the maritime community; and marine traffic may still transit around the zone during the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Boatswain's Mate Second Class (BM2) Ryan Peebles, Operations Petty Officer, Coast Guard Group/MSO Long Island Sound (203) 468–4408.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes a safety zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 9:15 p.m. July 20, 2002 through 10:30 p.m. July 21, 2002, add temporary § 165.T01–013 to read as follows:

§ 165.T01–013 Safety Zone: Groton Long Point Yacht Club Fireworks Display, Groton, CT.

(a) *Location.* The following area is a safety zone: All waters off Groton Long Point in Long Island Sound within a 600-foot radius of approximate position 41°18′05″ N, 072°02′08″ W (NAD 1983).

(b) *Enforcement period.* This safety zone will be enforced from 9:15 p.m. to 10:30 p.m. July 20, 2002, but in case the event is postponed because of inclement weather, the zone will be enforced instead during the same hours on July 21, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, Long Island Sound.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 12, 2002.

J.J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 02–7572 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD06

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to postpone the implementation of existing snowmobile regulations in Yellowstone National Park, the John D. Rockefeller, Jr., Memorial Parkway, and Grand Teton National Park for one year. This proposal is in conjunction with the Supplemental Environmental Impact Statement (SEIS) being prepared for all three NPS areas. This additional time is needed because the NPS has not had sufficient time to plan for and implement the NPS-managed, mass-transit, snowcoach-only system outlined in the existing Winter Use Plan and to complete the Supplemental Environmental Impact Statement.

DATES: Written comments will be accepted through May 28, 2002.

ADDRESSES: Comments may be sent to Robert J. Maguire, Winter Use Regulations, National Park Service, P.O. Box 124, Moose, WY 83012. Fax: (307) 739–3504. Email: *Grte_winter_regs@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW, Room 7413, Washington, DC 20240. Phone: (202) 208–4206. Fax: (202) 208–6756. Email: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1990 a Winter Use Plan was completed for Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway). In 1994 the National Park Service (NPS) and U.S. Forest Service (USFS) staff began work on a coordinated interagency report on Winter Visitor Use Management. This effort was in response to an earlier than expected increase in winter use. The 1990 Winter Use Plan projected 143,000 visitors for the year 2000. Winter visitors to YNP and GTNP in 1992–93 exceeded this estimate. Total visitors to YNP and GTNP in that year were, respectively, 142,744 and 128,159.

In 1994 the Greater Yellowstone Coordinating Committee (GYCC), composed of National Park Service Superintendents and National Forest Supervisors within the Greater Yellowstone Area (GYA), recognized the trend toward increasing winter use and identified concerns relating that use. The GYCC chartered an interagency study team to collect information relative to these concerns and perform an analysis of winter use in the GYA. This analysis, Winter Visitor Use Management: a Multi-agency Assessment, was drafted in 1997 and approved by the GYCC for final publication in 1999. The assessment identifies desired conditions for the GYA, current areas of conflict, issues and concerns, and possible ways to address them. The final document considered and incorporated many comments from the general public, interest groups, and local and state governments surrounding public lands in the GYA.

In May 1997, the Fund for Animals filed a suit against the National Park Service (NPS). The suit alleged that the NPS had failed to conduct adequate analysis under the National Environmental Policy Act (NEPA) when developing its winter use plan for the areas, failed to consult with the U.S. Fish and Wildlife Service on the effects of winter use on threatened and endangered species, and failed to evaluate the effects of trail grooming on wildlife and other park resources. In October 1997, the Department of Interior (DOI) and the plaintiffs reached a settlement agreement. Under the agreement, the NPS agreed, in part, to prepare an environmental impact statement (EIS) for new winter use plans for the parks and the parkway. This settlement provision was satisfied with publication and distribution of the final environmental impact statement (FEIS) on October 10, 2000. A record of decision (ROD) was signed by Intermountain Regional Director Karen Wade on November 22, 2000, and subsequently distributed to interested and affected parties. The ROD selected FEIS Alternative G, which eliminates both snowmobile and snowplane use from the parks by the winter of 2003–2004, and provides access via an NPS-managed, mass-transit snowcoach system. The decision was based on a finding that existing snowmobile and snowplane use impairs park resources and values, thus violating the statutory mandate of the NPS.

Implementing aspects of this decision relating to designation of routes available for over-snow motorized access required a rule change for each park unit in question. Following publication of a proposed rule and the subsequent public comment period, a final rule was published in the **Federal Register** on January 22, 2001. The rule became effective on April 22, 2001. Full implementation of the plan and the rule changes do not occur until the winter of 2003–2004.

The Secretary of the Interior and others in the Department of the Interior and the National Park Service were named as defendants in a lawsuit brought by the International Snowmobile Manufacturers Association and several groups and individuals. The State of Wyoming intervened on behalf of the plaintiffs. The lawsuit asked for the decision, as reflected in the ROD and final rule, to be set aside. The lawsuit alleged that NPS failed to give legally mandated consideration to all of the alternatives, made political decisions outside the public process and contradictory to evidence and data, failed to give the public appropriate notice and participation, failed to adequately consider and use the proposals and expertise of the Cooperating Agencies, failed to properly interpret and implement the Parks' purpose, discriminated against disabled visitors, and improperly adopted implementing regulations. A settlement was reached on June 29, 2001 and, through its terms, NPS is acting as lead agency to prepare a Supplemental Environmental Impact Statement (SEIS). In accordance with the settlement, the SEIS will incorporate ''any significant new or additional information or data submitted with respect to a winter use plan.'' Additionally, the NPS will consider new information and data submitted regarding new snowmobile technologies. A Notice of Intent to prepare a Supplemental Environmental Impact Statement was published in the **Federal Register** on July 27, 2001 (66 FR 39197).

As a term of the settlement, the State of Wyoming was designated as a ''cooperating agency'' for the development of the Supplemental EIS. Subsequent to the settlement, all other agencies that signed cooperating agency agreements during the earlier EIS process agreed to be cooperating agencies for the SEIS. These agencies are: the U.S. Forest Service, the States of Montana and Idaho, Fremont County Idaho, Gallatin and Park Counties in Montana, and Park and Teton Counties in Wyoming. In addition, the Environmental Protection Agency (EPA) was invited to be a new cooperating agency in this effort.

The NPS determined that the preparation of a Supplemental EIS will further the purposes of the National Environmental Policy Act, which includes soliciting more public comments on the earlier decision and alternatives and considering new information not available at the time of the earlier decision. The purpose of this rule is to postpone the implementation of existing snowmobile regulations in Yellowstone National Park, the John D. Rockefeller, Jr., Memorial Parkway, and Grand Teton National Park for one year because the NPS has not had sufficient time to plan for and implement the NPS-managed, mass-transit, snowcoach-only system outlined in the existing Winter Use Plan and to complete the Supplemental EIS.

The following proposed rule changes are common to all three parks. The use of snowmobiles will be extended until the end of the 2003–2004 winter use season. The implementation of public use limits set to go into effect in the 2002–2003 winter use season will be delayed until the winter use season 2003–2004. The designated routes and hours of operation for snowmobiles during the winter use season of 2002–2003 will also be used for the 2003–2004 winter use season.

In Yellowstone National Park the requirement that snowmobiles be accompanied by an NPS permitted guide will be implemented during the 2003–2004 winter use season. The use of snowmobiles on the frozen surface of Jackson Lake in Grand Teton National Park will be permitted until the end of the 2002–2003 winter use season.

Additional regulations concerning licensing, hours of operation and snowplane use were effective for the winter use season 2001–2002. The existing regulations prohibit the use of snowplanes in Grand Teton National Park after the winter season of 2001–2002. Those provisions are not addressed in, nor affected by, the supplemental EIS process and therefore it is appropriate they take affect as they appear in the existing regulations. No public comment is being solicited on these provisions.

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

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

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

This rule would delay any adverse economic impact from the existing rule for one year, there may be economic benefits resulting from the proposed extension. In the Draft Supplemental Environmental Impact Statement (DSEIS), the NPS estimated that in 2003–2004, the economic outputs and employment impacts of implementing actions under this rule are: in the five-county, greater Yellowstone area, an estimated loss of 15.9 to 21.1 million dollars; in the three-state area surrounding the parks, a variance of a possible 18.4 million dollar loss to a 7.0 million dollar increase. Increased winter visitation from new visitors to the park under existing regulations could substantially offset estimated losses and employment reductions from current visitors.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions

under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule will only postpone the prohibition on snowmobiles for one year within specific national parks. No grants or other forms of monetary supplements are involved.

(4) This rule may raise novel legal or policy issues.

The issue of prohibiting snowmobiles or allowing their continued use has generated local as well as national interest on the subject in the greater Yellowstone area. Previously, tens of thousands of public comments were received and analyzed in the development of the FEIS, Winter Use Management Plan, and existing regulations.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

After considering the economic impacts of the delay rule on small entities, NPS concludes the delay rule will mitigate the impacts on small businesses during the winters of 2002–2003 and 2003–2004. The NPS projects higher total levels of revenue for firms providing unguided and guided snowmobile rentals and snowcoach tours in those winters.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

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

This rule would delay any adverse economic impact from the existing rule for one year, there may be economic benefits resulting from the proposed extension. In the Draft Supplemental Environmental Impact Statement (DSEIS), the NPS estimated that in 2003–2004, the economic outputs and employment impacts of implementing actions under this rule are: in the five-county, greater Yellowstone area, an estimated loss of 15.9 to 21.1 million dollars; in the three-state area surrounding the parks, a variance of a possible 18.4 million dollar loss to a 7.0 million dollar increase. Increased winter visitation from new visitors to the park under existing regulations could substantially offset estimated losses and employment reductions from current visitors.

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

Delaying the implementation of current snowmobile regulations for one year will have little effect on costs or prices for consumers, individual industries or any government agency.

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

This rulemaking has no effect on methods of manufacturing or production and specifically influences only the Wyoming region, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

This rule postpones the implementation of existing snowmobile regulations for one year. It imposes no other requirements on other agencies, governments, or the private sector.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

This rule proposes to delay the implementation of existing snowmobile regulation for one year. Private property within the boundaries of those parks will still be afforded access during the winter use season. No other property is affected.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed rule effects use by the public of NPS administered lands. It has no outside effects on other areas and only address a portion of the use within parks.

Civil Justice Reform (E.O. 12988)

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

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

In 2000, NPS completed a Final Environmental Impact Statement and issued a Record of Decision. That Record of Decision was the basis for the existing rule. A Draft Supplemental Environmental Impact Statement (DSEIS) has been prepared to reconsider the Record of Decision. A copy of the FEIS or DSEIS is available by contacting the Superintendent of Yellowstone or Grand Teton National Parks or on the World Wide Web at *www.nps.gov/grte/winteruse/intro.htm.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Numerous tribes surrounding the greater Yellowstone area were consulted in the development of the Winter Use Plan and FEIS. The main concerns expressed by the tribes were the affects on wildlife by snowmobiles. This rule has no effect on tribal lands or trusts.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example § 7.22 Grand Teton National Park.) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also email the comments to this address: *Exsec@ios.doi.gov*.

Drafting Information: The principal contributors to this proposed rule are Robert J. Maguire, North District Ranger, Grand Teton National Park; Kym A. Hall, NPS Regulations Program Manager; Debra Hecox, Attorney-Advisor, Solicitor's Office; Bob Rossman, Outdoor Recreation Planner, Grand Teton National Park; Sarah Creachbaum, Outdoor Recreation Planner, Grand Teton National Park; and John Sacklin, Supervisory Planner, Yellowstone National Park.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail your comments to Robert J. Maguire, Winter Use Regulations, National Park Service, P.O. Box 124, Moose, WY 83012. You may also comment via the Internet to *grte_winter_regs@nps.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Finally, you may hand deliver comments to Robert J. Maguire, Grand Teton National Park, North District Office, Colter Bay, Wyoming. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

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

We propose to amend 36 CFR Part 7 as set forth below:

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

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

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

2. In § 7.13, remove and reserve paragraph (l)(2), revise the introductory text of paragraph (l)(5), revise the introductory text of paragraph (l)(7), revise paragraph (l)(11)(i), and revise paragraph (l)(11)(viii) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(2) [Removed and Reserved]

* * * * *

(l)(5) *What routes are designated for snowmobile use in the park during the winter seasons of 2002–2003 and 2003–2004?* During the winter use seasons of 2002–2003 and 2003–2004, the following routes are designated for snowmobile use:

* * * * *

(l)(7) *What limits are established for the number of snowmobiles permitted to use the park each day?* For the winter use season 2003–2004, the numbers of snowmobiles allowed to use the park each day are listed in the following table:

* * * * *

(l)(11)(i) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9:00 p.m. and 8:00 a.m. except by authorization.

* * * * *

(l)(11)(viii) During the winter season of 2003–2004, snowmobiles must be accompanied by an NPS permitted guide and may not travel in groups of more than 11 snowmobiles.

* * * * *

3. In § 7.21, revise paragraph (a)(1), remove and reserve paragraph (a)(2), revise paragraph (a)(4) introductory text, revise paragraph (a)(5) introductory text, and revise paragraph (a)(9)(vi) to read as follows:

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

* * * * *

(a)(1) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance within the public use limits and operating conditions established in this section until the end of the winter use season of 2003–2004 at which time snowmobile use in the Parkway is prohibited except for essential administrative use and in emergency situations as determined by the Superintendent.

(a)(2) [Removed and Reserved]

* * * * *

(a)(4) *What routes are designated for snowmobile use in the Parkway in the winter use seasons of 2002–2003 and 2003–2004?* During the winter use seasons of 2002–2003 and 2003–2004, the following routes are designated for snowmobile use:

* * * * *

(a)(5) *What limits are established for the number of snowmobiles permitted to use the Parkway each day?* For the winter use season 2003–2004, the numbers of snowmobiles allowed to use the Parkway each day are listed in the following table:

* * * * *

(a)(9)(vi) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9:00 p.m. and 8:00 a.m. except by authorization.

* * * * *

4. In § 7.22, revise paragraph (g)(1), remove and reserve paragraphs (g)(2) and (g)(3), revise paragraph (g)(4), revise paragraph (g)(6), and revise paragraph (g)(7)(vi) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) May I operate a snowmobile in Grand Teton National Park? During the winter use seasons of 2002–2003 and 2003–2004, you may operate a snowmobile on the routes designated in paragraph (g)(6) of this section in compliance with public use limits and operating standards established by the Superintendent. Effective the winter use season of 2004–2005, snowmobile use will be restricted to the routes and purposes in paragraph (g)(10), (11), (12), and (13) of this section. All other snowmobile use is prohibited, except for essential administrative use and in emergency situations as determined by the Superintendent.

(g)(2) [Removed and Reserved]

(g)(3) [Removed and Reserved]

(g)(4) Effective until the end of the winter use season 2002–2003, the following water surface is designated for snowmobile use: The frozen surface of Jackson Lake.

* * * * *

(g)(6) *What routes and limits are designated for snowmobile use in the park during the winter use seasons of 2002–2003 and 2003–2004?* For the winter use seasons of 2002–2003 and 2003–2004, the Continental Divide Snowmobile Trail along U.S. 26/287

from Moran to the eastern park boundary and along U.S. 89/287 from Moran to the north park boundary is designated for snowmobile use. The Superintendent may open or close this route after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety. During the winter use season of 2003–2004 a maximum of 25 snowmobiles are allowed to use this route each day.

* * * * *

(g)(7)(vi) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9:00 p.m. and 8:00 a.m.

* * * * *

Dated: March 20, 2002.

Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 02–7707 Filed 3–28–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

42 CFR Part 36

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

AGENCY: Indian Health Service, DHHS.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of Health and Human Services (DHHS) published a proposed rule in the **Federal Register** (67 FR 6998, February 14, 2002) to implement Title V of the Tribal Self-Governance Amendments of 2000, Pub. L. 106–260 (the Act). The proposed rule was negotiated among representatives of Self-Governance and non-Self-Governance Tribes and the DHHS and includes provisions governing how DHHS/Indian Health Service (IHS) carries out its responsibility to Indian Tribes under the Act and how Indian Tribes carry out their responsibilities under the Act. As required by section 517(b) of the Act, the DHHS developed the proposed rule with active Tribal participation of Indian Tribes, inter-Tribal consortia, Tribal organizations and individual Tribal members, using the guidance of the Negotiated Rulemaking Act, 5 U.S.C. 561 et seq.

The proposed rule was published in the **Federal Register** with a 60-day public comment period. Any interested party was invited to provide comment. To address comments received, a meeting is scheduled for the location and date provided below. As a result of the meeting, the Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance (the Committee) may recommend changes in the proposed rule in response to comments received.

DATES: The Committee will meet as follows: April 15, 1:00 p.m.—6:00 p.m.,; April 16–17, 8:00 a.m.—6:00 p.m.; April 18, 8:30 a.m.—1:00 p.m., Bethesda, MD.

ADDRESSES: The location of the meeting is: Bethesda, MD—Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20817.

FOR FURTHER INFORMATION CONTACT: Paula Williams , Director, Office of Tribal Self-Governance, Indian Health Service, 801 Thompson Avenue, Suite 240, Rockville, MD 20852, Telephone 301–443–7821. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The meeting will be 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 meeting to the extent time permits. A summary of the Committee meeting will be available for public inspection and copying ten days following the meeting at the address listed in the preceding paragraph.

Dated: March 25, 2002.

Duane L. Jeanotte,

Acting Director.

[FR Doc. 02–7527 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 483 and 488

[CMS–2131–P]

RIN 0938–AL04

Medicare and Medicaid Programs; Requirements for Paid Feeding Assistants in Long Term Care Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide States the flexibility to allow long term care facilities to use paid feeding assistants to supplement the services of certified nurse aides if their use is consistent with State law. If facilities choose this option, feeding assistants must complete a specified training program. This proposed rule would improve the quality of care in long term care facilities by ensuring that residents are assisted with eating and drinking as needed.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 28, 2002.

ADDRESSES: In commenting, please refer to file code CMS–2131–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Mail written comments (one original and three copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2131–P, PO Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nola Petrovich, (410) 786–4671.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–14–03 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD, on Monday through

Friday of each week from 8:30 a.m. to 4 p.m. (Phone (410) 786–7201).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Legislation

Sections 1819(a) through (e) and 1919(a) through (e) of the Social Security Act (the Act) set forth the requirements that long term care facilities must meet to participate in the Medicare and Medicaid programs, respectively. Sections 1819(f)(2) and 1919(f)(2) of the Act contain requirements for nurse aide training and competency evaluation programs (NATCEP). Sections 1819(g) and 1919(g) of the Act contain the criteria that we use to assess a facility's compliance with the requirements. These statutory provisions were mandated by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203, enacted December 22, 1987). The requirements for long term care facilities are codified at 42 CFR part 483, subpart B; the nurse aide training and competency evaluation program requirements are codified at 42 CFR part 483, subpart D; and the survey, certification and enforcement procedures are codified at 42 CFR part 488, subparts E and F. Sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act and regulations at § 483.75(e) define a nurse aide as any individual furnishing nursing or nursing-related services to residents in a facility, who is not a licensed health professional, a registered dietitian, or someone who volunteers to furnish services without pay. Sections 1819(f)(2) and 1919(f)(2) of the Act set forth the requirements for approval of a nurse aide training and competency evaluation program, but do not define ''nursing'' or ''nursing related'' skills. Section 483.152 of the regulations specifies nurse aide training requirements. These include, for example, basic nursing skills, personal care skills, communication and interpersonal skills, infection control, safety and emergency procedures, mental health and social service needs, residents' rights, care of cognitively impaired residents, and basic restorative services.

Current Program Experience

Currently, there is no provision in the regulations for the use of single-task workers, such as paid feeding assistants, in nursing homes. To ensure the safety of facility residents, we require that qualified nursing staff provide assistance with eating and drinking, although there is some question whether or not all residents need medical supervision. This group of personnel includes registered nurses, licensed practical nurses, and certified nurse aides who have completed 75 hours of training. However, volunteers, who are usually family members, may also feed residents, because the law and regulations exclude volunteers from the definition of certified nurse aide.

Nursing homes in many States report a continuing shortage of certified nurse aides. Nursing homes are finding it increasingly difficult to train and retain sufficient numbers of qualified nursing staff, especially certified nurse aides. Certified nurse aides perform the majority of resident care tasks. Other employers often pay similar wages for less physically and emotionally demanding jobs. This makes it harder for nursing homes to employ enough nursing staff to perform routine nursing care and to feed residents who need minimal help or just encouragement at mealtimes. Feeding residents is often a slow process and competes with more complex tasks, such as bathing, toileting, and dressing changes, as well as urgent medical care.

For many elderly nursing home residents, physical and psychological changes often interfere with eating ability and meal consumption. Residents may need assistance with feeding if they have, for example, cognitive impairment, impaired swallowing due to muscular weakness or paralysis, a tendency to aspirate or choke, poor teeth, ill-fitting dentures or partial plates, or poor muscular or neurological control of their arms or hands, as with Parkinson's disease.

Current Trends

Nursing homes are caring for an aging population that has more acute clinical conditions than in the past. The result is a higher percentage of nursing home residents who need higher levels of medical care, which takes more staff time and leaves less time for routine tasks, such as ensuring that residents eat their meals and drink enough fluids.

In addition, evidence suggests that there has been a recent increase in assisted living facilities that house many individuals with minimal medical needs who previously would have been cared for in nursing homes. Both of these trends have resulted in a frailer nursing home population than previously, with residents who are more dependent on nursing staff for basic needs, such as feeding and personal care. A critical shortage of certified nurse aides in many parts of the country has resulted in a need for staff who are specially trained to help residents eat at mealtimes, to supplement, not replace certified nurse aides.

Some residents only need encouragement or minimal assistance, which does not require medical training. Properly trained nonmedical personnel could provide this type of assistance. Nurse aides and other nursing staff receive training so that they are able to feed residents with all kinds of feeding problems. A higher level of training is required of nurse aides because they need to be able to deal with complicated feeding problems. However, when there is a nurse aide shortage, it is often the case that residents without complicated feeding problems receive little or no assistance at mealtimes with eating or drinking, while the nursing staff focuses on feeding residents with complicated problems. We believe there is a place in nursing homes for the use of feeding assistants who, after proper basic training in feeding techniques and working with the elderly, are able to feed residents who do not have complicated feeding problems. It is reasonable to require that feeding assistants receive a lower level of training than a nurse aide because feeding assistants would not handle complicated feeding cases. This would allow facilities, if they choose, to train other facility employees as feeding assistants so that available staff can feed residents at mealtimes.

Facility Staff Shortages

Because of the shortage of certified nurse aides and the increasingly complex medical needs of residents, facilities in some States have used paid

feeding assistants to supplement certified nurse aides to ensure that residents take in adequate food and fluids. Generally, feeding assistants used by these facilities are part-time workers, often retired individuals, or homemakers who are available for a few hours a day. They may also be older students who come into the facility between 1 and 2 hours either at the noon or evening meal. In other facilities, staff shortages are so acute that all nonmedical employees, including the administrator of the facility, are required to complete training and help feed residents at mealtimes. Training facility personnel for functions other than their primary position is known as cross-training. There is anecdotal evidence that cross-training of personnel increases coordination and continuity of care. It also contributes to increased morale and lower staff turnover.

There is no provision in Federal regulations for the employment of nursing home workers who perform only a single task without completing 75 hours of nurse aide training. Currently, residents must be fed by a registered nurse, licensed practical nurse, or a nurse aide who has completed 75 hours of medical training and who has been certified as competent to perform all nurse aide tasks. Volunteers may also feed residents. The reason for this existing policy is to ensure that residents who cannot, or do not, feed themselves are fed by nursing staff who have medical training. This is intended to protect residents from unskilled workers who might injure a resident by not recognizing serious medical complications associated with eating.

Wisconsin and North Dakota are two States in which nursing homes have had serious difficulty hiring enough certified nurse aides and have used feeding assistants as a supplement to certified nurse aides. Other States have expressed interest in using paid feeding assistants, including Ohio, Minnesota, Florida, California, and Illinois. Florida and Illinois have both passed laws that permit the use of single task workers in their States, but they have not yet implemented the provisions.

Wisconsin nursing homes have been using single-task feeding assistants for more than 7 years. Wisconsin uses a structured, formal program that requires a facility wanting to implement a feeding assistant program to submit an application for approval by the State. The classes are taught by a registered nurse, with a registered dietitian teaching the dietary elements of the program. A facility's approved program must include the following core areas: Interpersonal communication and social interaction; Basic nursing skills (including infection control); Personal care skills (assisting with eating, hydration); Basic restorative services (assistive devices for eating); Resident rights; and special problems associated with Dementia (specialized feeding and intake problems). Participants who complete the training must demonstrate skills and pass a written test with a score of 80 percent or better. Feeding assistants are used solely for feeding residents who have no feeding complications. They are permitted to feed residents only in the dining room and operate under the direction of a registered nurse or licensed practical nurse. Feeding assistants serve to supplement care delivered by certified nurse aides, which frees up more extensively trained aides to perform more complex resident care tasks.

North Dakota has used paid feeding assistants for a number of years and has a slightly less formal program than that of Wisconsin. The residents to be fed are selected by the dietary and nursing staff. If a facility has a nurse aide training program, the training coordinator and dietitian work together to train new feeding assistants individually. After training and orientation, a new feeding assistant is assigned to one resident who needs minimal assistance. As the assistant gains skill and confidence, he or she is assigned to more residents at a meal or to a resident who requires a higher level of skill to feed. Typically, feeding assistants work only about 1½ hours per day, providing assistance at either the noon or evening meal.

Conclusion

We are committed to ensuring that long term care residents receive the best possible care. We recognize that a shortage of certified nurse aides adversely affects resident care and prevents many residents from receiving adequate help with eating and drinking. Further, we are persuaded by the experience of States that have used paid feeding assistants, that proper training and medical direction of these feeding assistants minimizes the risk to residents, while providing substantial benefits to residents. After thoroughly considering this issue, we believe that the benefits to residents outweigh the potential risks and so we are taking steps to resolve the issue by publishing this proposed rule. We believe that a policy change to allow the use of feeding assistants can be accommodated under existing statute. There is nothing in the statute governing requirements for long term care facilities (sections 1819 and 1919 of the Act) that would preclude the use of these workers and we believe that there is no conflict with other statutory requirements.

II. Provisions of the Proposed Regulations

We would provide States the flexibility to allow a facility the option to use paid feeding assistants to help residents with eating and drinking at mealtimes. In new § 483.35(h), we would specify that if a facility uses paid feeding assistants, the feeding assistants must complete a State-approved training course that meets minimum requirements. The proposed course requirements are listed in § 483.160 and would include only non-nursing-related services and items that are currently part of the nurse aide training requirements. In addition to training in proper feeding techniques and how to assist residents with eating and drinking, we would include in the training other basic skills necessary to work with elderly and disabled nursing home residents. These include communication and interpersonal skills; appropriate responses to resident behavior; safety and emergency procedures, including the Heimlich Maneuver; infection control; resident rights; and recognizing changes in patients that are inconsistent with their normal behavior, and the importance of reporting those changes to the supervisor. Some States may want to include other requirements in their training, for example, the use of assistive devices for the unique needs of the cognitively impaired. We are not, however, including these other requirements. We anticipate that this training could easily be implemented in any facility with an approved nurse aide training program because the requirements are not new. We note that these requirements are the minimum and States and facilities must use these as a baseline, but may add any others that they believe are appropriate to structure a feeding assistance program that meets their needs.

We would require that each facility maintain a record of individuals it uses as feeding assistants who have successfully completed the feeding assistance training. In keeping with other similar requirements, we would require States to require facilities to report to the States any incidents of feeding assistants who have been found to neglect or abuse a resident, or misappropriate a resident's property. The States must maintain records of all reported incidents. States are not required to maintain a formal registry, as required for nurse aides, but the intent is similar.

The facility may use paid feeding assistants to feed residents who do not have a clinical condition that would require the training of a nurse or nurse aide. It is important for the professional nursing staff in the facility to identify residents who need help eating and drinking and those who can be fed by feeding assistants. We believe that this can be established by the comprehensive assessment (§ 483.20). Often, residents need help on some days and not on others. This means that the nurse in charge may need to make feeding decisions on a daily basis. Nurses or certified nurse aides would continue to feed residents with clinical conditions that require nursing training, including for example, recurrent lung aspirations, difficulty swallowing, or those on feeding tubes or parenteral/IV feedings. All feeding assistants must work under the direct supervision of a registered nurse or licensed practical nurse. This means that a nurse is in the unit or on the floor where the feeding assistance is furnished and is immediately available to give help, if necessary. We would also revise ''nurse aide'' at § 483.75(e) to clarify that paid feeding assistants are not performing nursing or nursing-related tasks.

We would define ''paid feeding assistant'' in § 488.301, as an individual who is paid by a facility or paid under an arrangement with another agency or organization to feed residents and who meets the requirements specified in § 483.35(h). Any nonprofessional nursing home employee, including the administrator, activity staff, clerical, laundry, or housekeeping staff may be considered a feeding assistant and may feed residents at mealtimes if he or she has completed the training requirements in § 483.160.

These requirements would not apply to volunteers, including family members. Sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act exempt volunteers from the definition of ''nurse aide'' and nurse aide training requirements, which are more stringent than feeding requirements. Therefore, we believe that it is logical to exempt volunteers from requirements concerning feeding assistants. However, volunteers may take the training if they wish, but there is no requirement that they do so.

Feeding assistants are intended to supplement certified nurse aides, not be a substitute for certified or licensed nursing staff. Therefore, feeding assistants may not be counted toward the minimum staffing requirements in § 483.30. Facilities that choose the option to use paid feeding assistants, when consistent with State law, remain responsible for any adverse actions resulting from the use of these assistants, as with any other employee.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether OMB should approve an information collection, section 3506(c)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Nursing homes in two States currently use feeding assistants. While we know of eight other States that have expressed an interest in implementing this policy, it is a facility option and we do not know how many facilities in which States will choose this option. There are approximately 17,000 nursing homes in the nation, and they are not evenly distributed within States. We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 483.160(b)

1. Requirement

A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

2. Burden

Our rough estimate is that 10 States will implement this policy, that is, 20 percent of nursing homes (20 percent of 17,000 = 3400 facilities/respondents). We estimate that each facility will hire two feeding assistants, resulting in a total of 6,800 feeding assistants. Depending on the method chosen by a facility to collect this information, we believe that each facility (respondent) would spend no more than 30 minutes per month (6 hours per year) to enter feeding assistant information into its record-keeping system. Some months, facilities may have no information to add. With 3,400 facilities at 6 hours/year, the total would be 20,400 hours for facilities. Using a wage cost of $10 per hour, the total facility burden is estimated to be $204,000.

Section 483.160(c)

1. Requirement

Each State must require a facility to report to the State all incidents of any paid feeding assistant who has been found to neglect or abuse a resident or misappropriate a resident's property. Each State must maintain a record of all reported incidents.

2. Burden

We estimate that each facility and State will spend no more than 30 minutes per month to add new information to the system. This comes to 6 hours annually per facility and State × 10 facilities/States = 60 hours. Using a wage cost of $10 per hour, the total facility or State cost is estimated to be $600.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this proposed rule, as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of

available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

This proposed rule is not a major rule. It would not result in any budget impact. A facility could employ a feeding assistant under the current regulations. This proposed rule simply reduces the amount of training that would be required for an individual that would furnish only feeding assistance and provides States with the option of using paid feeding assistants, rather than CNAs, to provide feeding assistance.

The RFA requires agencies to determine whether a rule would have significant economic impact on a substantial number of small entities (analyze options for regulatory relief of small businesses). For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually (see 65 FR 69432). For purposes of the RFA, 85 percent of long term care facilities with revenues of $10.0 million or less are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this proposed rule would not have consequential effects on State, local, or tribal governments, or on the private sector. This proposal is an option that does not constitute an unfunded mandate.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We believe that this proposed rule would not have a substantial effect on State or local governments. This proposal is an option, which facilities may choose to adopt if it is consistent with State law and the State promotes this option.

B. Anticipated Effects

These proposed provisions would affect long term care facilities. We expect the provisions to be a substantial benefit both to facilities that are short-staffed and to beneficiaries that need help with eating and drinking. By using feeding assistants, facilities can use trained certified nurse aides to perform more complex resident care tasks. There are approximately 17,000 long term care facilities participating in the Medicare and Medicaid programs. We do not know how many facilities would choose the option to hire feeding assistants. We know of two States that have used feeding assistants for a number of years. Wisconsin nursing homes have been using single-task feeding assistants for more than 7 years, and North Dakota has used them since the 1980s. Several other States have passed laws, or indicated that they wish to implement a feeding assistant program, but have not yet done so (including Ohio, Minnesota, Florida, California, and Illinois). If these States adopt this option, they will realize the benefits of using paid feeding assistants. If we receive additional information from public comments about the number of States that may choose this option and costs to the States and facilities, we will summarize the information in the subsequent final rule.

We believe that both residents and providers would benefit from these provisions. Residents would receive more assistance with eating at meals. Facilities would have greater choices in hiring staff to meet their needs and the needs of residents, freeing certified nurse aides to perform more complex tasks that require their medical training.

C. Alternatives Considered

One alternative to this policy would be for facilities to hire more nursing staff, including nurse aides. However, not only would this cost more, but due to the continuing shortage of certified nurse aides, we know of no other alternatives at the moment that would meet our objectives. Certified nurse aides perform the majority of resident care in a long term care facility and frequent nurse aide shortages often result in less than adequate care for residents and greater stress on certified nurse aides and other staff.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, CMS proposes to amend 42 CFR chapter IV as set forth below:

A. Part 483 is amended as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Subpart B—Requirements for Long Term Care Facilities

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 483.35, the introductory text is republished, paragraph (h) is redesignated as paragraph (i) and republished, and a new paragraph (h) is added to read as follows:

§ 483.35 Dietary services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

* * * * *

(h) *Paid feeding assistants*—(1) *General rule.* A facility may use a paid feeding assistant, as defined in § 488.301 of this chapter, to feed

residents who meet the following conditions:

(i) Need assistance with eating and drinking.

(ii) Based on the comprehensive assessment, do not have a clinical condition that requires the assistance with eating and drinking of a registered nurse, licensed practical nurse, or nurse aide.

(2) *Requirements on facilities.* If a facility uses a paid feeding assistant, the facility must ensure that the feeding assistant meets the following requirements:

(i) *Training.* Completes a State-approved training course that meets the requirements of § 483.160.

(ii) Supervision. Works under the direct supervision of a registered nurse or licensed practical nurse. This means that a nurse is in the unit or on the floor where the feeding assistance is furnished and is immediately available to give help, if necessary.

(i) *Sanitary conditions.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

* * * * *

§ 483.75 [Amended]

3. In § 483.75(e), the definition of ''nurse aide'' is amended by adding the following sentence to the end of the definition: ''Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants as defined in § 488.301 of this chapter.''

* * * * *

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation; and Paid Feeding Assistants

4. The heading of subpart D is revised to read as set forth above.

5. A new § 483.160 is added to read as follows:

§ 483.160 Requirements for training of paid feeding assistants.

(a) A State-approved training course for paid feeding assistants must include, at a minimum, the following:

(1) Feeding techniques.

(2) Assistance with feeding and hydration.

(3) Communication and interpersonal skills.

(4) Appropriate responses to resident behavior.

(5) Safety and emergency procedures, including the Heimlich maneuver.

(6) Infection control.

(7) Resident rights.

(8) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.

(b) A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

(c) A State must require a facility to report to the State all incidents of a paid feeding assistant who has been found to neglect or abuse a resident, or misappropriate a resident's property. The State must maintain a record of all reported incidents.

B. Part 488, subpart E is amended as follows:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

Subpart E—Survey and Certification of Long Term Care Facilities

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh).

2. Section 488.301 is amended by adding a new definition of ''Paid feeding assistant'' in alphabetical order to read as follows:

§ 488.301 Definitions.

As used in this subpart—

* * * * *

Paid feeding assistant means an individual who meets the requirements specified in § 483.35(h)(2) of this chapter and who is paid to feed residents by a facility, or who is used under an arrangement with another agency or organization.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 5, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 14, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–7344 Filed 3–28–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 02–11875]

RIN 2127–AI04

Federal Motor Vehicle Safety Standards; Rear Impact Guard Labels; Notice of Proposed Rulemaking; Grant in Part, Denial in Part of Petition for Rulemaking

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

ACTION: Notice of proposed rulemaking; grant in part, denial in part of petition for rulemaking.

SUMMARY: This document responds to petitions for rulemaking from the Truck Trailer Manufacturers Association, American Trucking Associations, and Compass Transportation, Inc. Petitioners asked the agency to amend the Federal motor vehicle safety standard on rear impact guards by eliminating the labeling requirement. Under that requirement, rear impact guards must be permanently labeled with the guard manufacturer's name and address, the month and year in which the guard was manufactured, and the letters ''DOT.'' The petitioners asked that if NHTSA declined to eliminate the labeling requirement, the agency instead amend the labeling requirement by eliminating the requirement that the label be permanent, and allowing manufacturers to place the label where it may be the least exposed to damage.

This document denies petitioners' requests to eliminate the labeling requirement and the requirement that rear impact guards be permanently labeled, but grants petitioners' request to allow manufacturers to place the label on the rear impact guard where it may be least exposed to damage.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments should refer to the docket number above and be

submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Dr. William J.J. Liu, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; (Telephone: 202–366–2264) (Fax: 202–493–2739).

For legal issues: Mr. Dion Casey, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; (Telephone: 202–366–2992) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 1996, NHTSA published a final rule (61 FR 2003) establishing two Federal Motor Vehicle Safety Standards (FMVSSs) to address the problem of rear underride crashes. These are crashes in which a passenger car, truck, or multipurpose vehicle with a Gross Vehicle Weight Rating (GVWR) of 4,563 kilograms (10,000 lbs) or less (referred to collectively as ''passenger vehicles'') collides with the rear end of a trailer or semitrailer (referred to collectively as ''trailers''), and the front end of the passenger vehicle slides under (i.e., underrides) the rear end of the trailer.

The final rule established two standards that operate together to reduce the number of injuries and fatalities resulting from underride crashes. The first standard (Standard No. 223, Rear Impact Guards) specifies performance requirements that rear impact guards (guards) must meet before they can be installed on new trailers. It specifies strength requirements, as well as test procedures, that NHTSA uses to determine compliance with the standard. Standard No. 223 requires the guard manufacturer to provide instructions on the proper installation of the guard. It also requires guards to be permanently labeled with the guard manufacturer's name and address, the month and year in which the guard was manufactured, and the letters ''DOT.'' The letters constitute a certification by the guard manufacturer that the guard meets all the performance requirements of Standard No. 223. The standard requires manufacturers to place the label on the forward-facing surface of the horizontal member of the guard, 305 millimeters (mm) (12 inches) inboard of the right end of the guard, so that the label is readily visible by Federal Motor Carrier Safety Administration (FMCSA) inspectors.

The second standard (Standard No. 224, Rear Impact Protection) requires most new trailers with a GVWR of 4,536 kilograms (10,000 pounds) or more to be equipped with a rear impact guard meeting the requirements of Standard No. 223. Standard No. 224 specifies requirements regarding the location of the guard relative to the rear of the trailer. It also requires that the guard be mounted on the trailer in accordance with the instructions of the guard manufacturer.

In response to petitions for reconsideration, NHTSA published minor amendments to the standards in the **Federal Register** on January 26, 1998 (63 FR 3654). The standards became effective on that date.

II. Petitions

On December 10, 1998, NHTSA received a petition from the Truck Trailer Manufacturers Association (TTMA) requesting that the agency amend Standard No. 223 by eliminating the guard labeling requirement. TTMA argued that requiring a label on the guard is redundant because vehicle manufacturers are already required to certify compliance with all safety standards. 49 CFR 567.4(g)(5) requires manufacturers to affix to trailers a label containing the statement: ''This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above.''

On December 30, 1998, NHTSA received a similar petition from the American Trucking Associations (ATA), and on January 18, 1999, another petition from Compass Transportation, Inc. Both petitioners argued that the guard labeling requirement is redundant and requested that the agency eliminate the labeling requirement from Standard No. 223.

TTMA requested that if NHTSA declined to eliminate the guard labeling requirement, the agency instead eliminate the requirement that the guard be labeled permanently. TTMA argued that it is unlikely that any label will remain on the guard for the life of the trailer. TTMA also requested that NHTSA allow manufacturers the flexibility to place the label where it may be the least exposed to damage from operational and environmental factors.

III. Discussion and Analysis

A. Guard Labeling Requirement

NHTSA published a Notice of Proposed Rulemaking (NPRM) on January 8, 1981, proposing a single vehicle standard specifying requirements for testing guards on completed trailers. (46 FR 2136). Commenters on the NPRM expressed concern that the proposed requirements would be a substantial financial burden on some trailer manufacturers. These commenters stated that the trailer manufacturing industry consisted primarily of small firms that lacked the engineering capabilities to meet the requirements proposed in the NPRM.

In response to these comments, NHTSA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) on January 3, 1992, that proposed separate equipment and vehicle standards. (57 FR 252). Standard No. 223 provided for the testing of guards on a test fixture, and Standard No. 224 required guards complying with Standard No. 223 to be installed on trailers. The agency concluded that these separate standards would allow trailer manufacturers to purchase guards complying with Standard No. 223 from guard manufacturers, thus relieving trailer manufacturers, especially small manufacturers, of the burden associated with compliance testing.

In its comments on the SNPRM, TTMA stated,

> We appreciate your concern for the small trailer manufacturer in providing for the manufacturer of the guard being a different company than the manufacturer of the trailer. However, due to the variety of trailer configurations, often custom designs, it is likely that a substantial number of trailer manufacturers will manufacture their own guards.

TTMA claimed that affixing a certification label to the guard is redundant in those instances in which the guard is manufactured by the trailer manufacturer because the trailer manufacturer already has to certify compliance with all applicable FMVSSs under 49 CFR 567.4(g)(5). Thus, TTMA requested that trailer manufacturers who also manufacture their own guards be excluded from the guard labeling requirement.

The agency responded that allowing some guard manufacturers to omit the label would be impractical from an enforcement standpoint because trailer

inspectors would not be able to tell whether the guard was certified by the guard/trailer manufacturer as part of the trailer, or whether the trailer manufacturer installed a guard purchased from a guard manufacturer who did not make the required certification. The agency also did not believe that affixing the label would be a significant burden. Thus, the final rule retained the guard certification label requirement for all guards.

In their discussion of the labeling requirement, the TTMA, ATA, and Compass Transportation, Inc., petitions are nearly identical to the comments that TTMA submitted in response to the SNPRM. However, the petitioners requested that NHTSA eliminate the guard labeling requirement for all guards, regardless of who manufactures the guard.

The petitioners correctly stated that 49 CFR 567.4(g)(5) already requires trailer manufacturers to label each trailer as complying with all Federal motor vehicle safety standards. However, the separate equipment and vehicle standards allow a trailer manufacturer to install a complying guard produced by a guard manufacturer rather than by the trailer manufacturer itself. NHTSA developed the separate equipment and vehicle standards in an effort to relieve trailer manufacturers of the financial burden of compliance testing. Indeed, the separate equipment and vehicle standards were implemented largely in response to industry concerns about the cost of compliance testing.

While NHTSA has found that the majority of trailer manufacturers do manufacture and install their own guards, the agency has not received information from the petitioners or other parties showing a need to revise the separate equipment and vehicle standards. Without such information, the agency is not persuaded to change its position. Accordingly, NHTSA is denying the petitioners' request to eliminate the guard labeling requirements in Standard No. 223.

B. Permanent Requirement

TTMA requested that, if NHTSA maintained the guard labeling requirements in Standard No. 223, the agency instead change the wording of the labeling requirement to (1) delete the requirement that the label be permanent, and (2) allow manufacturers some flexibility regarding the location of the label on the guard so that the label may be placed where it is least exposed to damage from operational and environmental factors.

S5.3 of Standard No. 223 currently reads:

> Each guard shall be permanently labeled with the information specified in S5.3 (a) through (c) of this section. The information shall be in English and in letters that are at least 2.5 mm high. The label shall be placed on the forward-facing surface of the horizontal member of the guard, 305 mm inboard of the right end of the guard.

TTMA first suggested eliminating the requirement that the label be permanent. In its petition, TTMA argued:

> It is unlikely that any label will remain on the guard for the life of the trailer. A label on the forward facing portion of the horizontal member will be abraded by road dust, gravel, ice, snow, and other grime and debris. If the label were allowed on the rearward facing portion of the horizontal member it would be abraded on some types of trailers by contact between the horizontal member and loading docks and other structures.

However, TTMA provided no information documenting any problems trailer or guard manufacturers have experienced in meeting the requirement for a permanent label.

NHTSA acknowledges that the permanency of the label is not significant for the purpose of testing new guards for compliance with Standard No. 223. When the guard is new, the environmental and operational conditions that may damage guard labels are not an issue.

However, on September 1, 1999, the Federal Highway Administration (FHWA) published a Final Rule amending the Federal Motor Carrier Safety Regulations regarding rear impact protection to make them consistent with Standard Nos. 223 and 224. (64 FR 47703). FHWA stated that its proposed labeling requirement (now codified at 49 CFR 393.86(f)) was included, in part, ''to help motor carriers quickly determine if the underride device on a newly manufactured trailer meets NHTSA's requirements, and to assist State agencies responsible for enforcing motor carrier safety regulations.'' (63 FR 26759, May 14, 1998).

NHTSA generally does not specify a particular means (*i.e.,* labeling, etching, branding, stamping, or embossing) by which the manufacturer must achieve permanency. Thus, for NHTSA compliance purposes, the guard label is considered permanent if it satisfies the certification requirements specified in 49 CFR part 567. Section 567.4(b) specifies, ''The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.''

In consideration of the above, the agency continues to believe that the label must be permanently affixed. Thus, NHTSA is denying the petitioners' request to amend S5.3 of Standard No. 223 by eliminating the requirement that the guard label be permanent.

C. Location of Label

Finally, in its petition, TTMA requested:

> that the guard manufacturer have the flexibility to locate the label where it may experience the least exposure to damage. This location may vary according to the type of trailer and its use. Some trailers do not back up to loading docks while other trailers may have exposure to chemical products and environments.

As noted above, S5.3 of Standard No. 223 currently requires the label to be placed on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard.

The location of the guard label is of little significance to NHTSA personnel conducting compliance testing on new guards. The agency does not believe that allowing manufacturers flexibility in selecting the location of the label on the guard will be detrimental to its safety purposes.

The location of the guard label is of greater significance to FMCSA [1] and state inspectors charged with verifying that trailers on the road meet the applicable Federal Motor Carrier Safety Regulations and NHTSA standards. However, FMCSA representatives have indicated to NHTSA that during a typical Level 1 inspection, inspectors usually have ready access to the underside of the trailer. This enables the inspector to view the entire length of the horizontal member of the guard from both the front and rear. FMCSA representatives indicated that the specific location of the guard label is not critical, so long as it is located somewhere on the horizontal member of the guard.

S5.7.1.4.1(c) of Standard No. 108 requires retroreflective sheeting to be placed across the full width of the horizontal member of the guard. The minimum width of the retroreflective sheeting is one and one-half inches. Since S5.1 of Standard No. 223 requires that the projected cross-sectional height of the horizontal member of each guard must be at least four inches, there should be ample space to affix the guard label on the rearward-facing surface of

[1] The Federal Motor Carrier Safety Administration, which regulates commercial vehicles, was a part of the FHWA.

the horizontal member of the guard without interfering with the retroreflective sheeting, if the manufacturer determines that this location will be the least susceptible to operational or environmental damage.

Accordingly, NHTSA is proposing to amend S5.3 of Standard 223 to allow manufacturers flexibility in deciding where to place the label on the horizontal member of the guard so that they can minimize exposure to operational and environmental damage. The agency is proposing to revise the third sentence of S5.3 of Standard No. 223 to read as follows:

The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This notice was not reviewed under Executive Order 12866. In this document, NHTSA is simply proposing to give guard manufacturers greater choice regarding the location in which they place the guard certification label. They would be able to place it in a specified region on the forward or rearward-facing horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by Standard No. 108 and is readily accessible for visual inspection. Since Standard No. 223 already requires guard manufacturers to place the certification label on compliant guards, the agency believes that this proposal would not have any economic effects.

The DOT's regulatory policies and procedures require the preparation of a full regulatory evaluation, unless the agency finds that the impacts of a rulemaking are so minimal as not to warrant the preparation of a full regulatory evaluation. Since NHTSA is simply proposing to give guard manufacturers the flexibility to place the guard certification label on the guard where it will be the least exposed to damage, the agency believes that the impact of this rulemaking would be minimal. Thus, a full regulatory evaluation has not been prepared.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's (SBA) regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Most trailer and guard manufacturers qualify as small businesses under the SBA's regulations. However, as explained above in the section on Executive Order 12866 and DOT Regulatory Policies and Procedures, the agency believes that the impacts of this rulemaking would be minimal. The agency is simply proposing to allow guard manufacturers the flexibility to place the guard certification label on the guard where it will be the least exposed to damage. Therefore, I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The Executive Order defines ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this proposed rule would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49

U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This proposed rule would not require any collections of information as defined by the OMB in 5 CFR part 1320.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when it decides not to use available and applicable voluntary consensus standards.

There are no applicable voluntary consensus standards available at this time. However, NHTSA will consider any such standards if they become available.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, 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 in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. Thus, the agency has not prepared an Unfunded Mandates assessment.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Has the agency organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could the agency improve clarity by adding tables, lists, or diagrams?
—What else could the agency do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

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). NHTSA 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 address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

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, at the address given above 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 above 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?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for NHTSA to consider it in developing a final rule (assuming that one is issued), the agency 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 given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

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 beginning of this document. *Example:* If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571.223—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.223 would be amended by revising the third sentence of S5.3 as follows:

§ 571.223 Standard No. 223; Rear impact guards.

* * * * *

S5.3 *Labeling.* * * * The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection.

* * * * *

Issued: March 22, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–7568 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH95

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Newcomb's Snail, Extension of Comment Period, Notice of Public Hearing, and Notice of Availability of the Draft Economic Analysis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period, notice of public hearing, and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide notice that a public hearing will be held on the proposed determination of critical habitat for the Newcomb's snail *(Errina newcombi)* and that the comment period on this proposal is extended; we also announce the availability of the draft economic analysis of this proposed designation of critical habitat. Newcomb's snail is found on the island of Kauai, Hawaii. We are extending the comment period for the proposal to designate critical habitat for this species to hold the public hearing and to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in the final rule.

DATES: The public hearing will be held from 6 p.m. to 8 p.m. on April 17, 2002, in Lihue, HI. Prior to the public hearing, the Service will be available from 3:30 p.m. to 4:30 p.m. to provide information and to answer questions. Registration for the hearing will begin at 5:30 p.m. The comment period, which originally closed on March 29, 2002, will now close on April 29, 2002.

ADDRESSES: The public hearing will be held at the Radisson Kauai Beach Resort, 4331 Kauai Beach Drive, Lihue, Kauai, HI. The draft economic analysis is available from, and written comments and information should be submitted to, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

Newcomb's snail is a type of freshwater snail belonging to the lymnaeid family of snails. Adult Newcomb's snails are approximately 6 millimeters (mm) (0.25 inches (in)) long and 3 mm (0.12 in) wide in size. Its shell is smooth and black, formed by a single, oval whorl, about 6 mm (0.25 in) long. The tentacles of Newcomb's snail, like other lymnaeids, are flat and triangular, rather than conical or filament-shaped as found on other freshwater snails. Newcomb's snails feed upon algae and other material growing on submerged rocks. Eggs are attached to underwater rocks or vegetation and the entire life cycle is tied to the stream system in which the adults live.

Populations of Newcomb's snail are currently found in small areas within the Kalalau, Lumahai, Hanalei, Waipahee, Makaleha, and North Wailua stream systems on the Hawaiian island of Kauai. Historically, Newcomb's snail

was found in Hanakoa, Hanakapiai, and Wainiha streams, but these populations are thought to be extirpated. The known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals.

Some of the suspected historical decline of the snail may be attributed to habitat loss and degradation through water diversion and well drilling. Currently, predation by alien species, natural disasters and habitat alteration are threats that imperil Newcomb's snail. The rosy glandina snail *(Euglandina rosea)* is an introduced snail that preys mostly on other snails. Two species of non-native marsh flies prey upon eggs and adults of Hawaiian freshwater snails. These flies were introduced in 1955 and 1966 as bio-control agents for a non-native snail that hosts a cattle parasite. Other introduced predators include introduced fish and frogs. Presently, Newcomb's snail faces an increased likelihood of extinction from naturally occurring events such as hurricanes due to the small number of remaining populations and their limited distribution.

Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), *Errina newcombi* was listed as a threatened species on January 26, 2000 (65 FR 4162). On January 28, 2002, we published a proposed rule in the **Federal Register** (67 FR 3849) to designate critical habitat for Newcomb's snail. Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the **Federal Register**. We received 2 requests for a public hearing during this time period. In response to these requests, we will hold a public hearing on the date and location described in the **DATES** and **ADDRESSES** section above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at this hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing are being published in newspapers concurrently with this **Federal Register** notice.

We propose to designate critical habitat in nine critical habitat units that total 26.29 kilometers (km) (16.33 miles (mi)) of main stream channel; in total, these areas encompass approximately 2,109 hectares (ha) (5,212 acres (ac)). Six of these sites are located on state lands, and three of these sites are on lands that are privately owned. Critical habitat units are proposed for reaches of stream main channel that range in length from 0.8 km (0.5 mi) to 7.58 km (4.71 mi); the units range in size from 35 ha (86 ac) to 876 ha (2165 ac).

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for Newcomb's snail, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

The original comment period was due to close on March 29, 2002. In order to accommodate the hearing and to provide the public with the opportunity to comment on the draft economic analysis of this proposed critical habitat designation as well as the proposed rule, we also extend the comment period. Written comments may now be submitted until April 29, 2002, to the Service office in the **ADDRESSES** section.

Public Comments Solicited

We will accept written comments and information during this extended comment period. If you wish to comment, you may submit written comments and information to the Field Supervisor, Pacific Islands Fish and Wildlife (see **ADDRESSES** section). Alternatively, you may hand-deliver comments to our Pacific Islands Fish and Wildlife Office at the above address.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address above. Copies of the draft economic analysis are available by writing to the Field Supervisor at the address above.

Author

The primary author of this notice is Gordon Smith, Fish and Wildlife Biologist, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 26, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–7724 Filed 3–28–02; 8:45 am]

BILLING CODE 4318–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 223, and 224

[Docket No.020319061–2061–01; I.D. 031402B]

RIN 0648–AP81

Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to prohibit the use of all pound net leaders measuring 12 inches (30.5 cm) and greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay from May 8 to June 30 each year. The affected area includes all Chesapeake Bay waters between the Maryland and Virginia state line (approximately 38 N. lat.) and the COLREGS line at the mouth of the Chesapeake Bay, and the waters of the James River, York River, and Rappahannock River downstream of the first bridge in each tributary. This action, taken under the Endangered Species Act of 1973 (ESA), is necessary to conserve sea turtles listed as threatened or endangered and aid in the enforcement of the prohibition on takes.

DATES: Comments on this action are requested, and must be received at the appropriate address or fax number (**ADDRESSES**) by no later than 5 p.m., eastern daylight time, on April 15, 2002.

ADDRESSES: Written comments on this action or requests for copies of the literature cited, the draft Environmental Assessment (EA)/ Regulatory Impact Review (RIR) should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments and requests for supporting documents may also be sent via fax to 978–281–9394. Comments will not be

accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Mary A. Colligan (ph. 978–281–9116, fax 978–281–9394), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking listed sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA. No incidental take of endangered sea turtles is currently authorized in the Virginia pound net fishery.

Existing information indicates that pound nets with large mesh and stringer leaders incidentally take sea turtles. A pound net leader with stretched mesh greater than 12 inches (30.5 cm) is considered to be a large mesh leader. A stringer leader consists of vertical lines spaced apart in a portion of the leader and mesh in the rest of the leader. Based on the available information, NMFS determined that interactions with pound net leaders were the most likely cause of a significant portion of documented sea turtle mortality in the Chesapeake Bay during the spring of 2001. Furthermore, NMFS believes it is likely that pound nets are a significant factor in the unusual spring sea turtle mortality event that occurs annually in Virginia state waters. This proposed action is necessary to provide for the conservation of threatened and endangered turtles by minimizing incidental take in the Virginia pound net fishery during the spring.

Virginia Spring Stranding Event

The Sea Turtle Stranding and Salvage Network (STSSN), a network of organizations authorized by NMFS to respond to sea turtle stranding events, has documented high sea turtle strandings in Virginia waters during the spring for the past 23 years. From 1994 to 2001, the average date of the first reported stranding was May 15, and the highest number of strandings typically occurred during the second half of May through the end of June, when turtles were migrating into the Bay. The magnitude of this stranding event has increased in recent years. During May and June, total reported Virginia sea turtle strandings were 84 in 1995, 85 in 1996, 164 in 1997, 181 in 1998, 129 in 1999, and 155 in 2000. Strandings during the spring of 2001 were exceptionally high; preliminary data indicates that 265 sea turtles stranded on Virginia beaches during May and June. This was twice the average number of turtles that stranded annually during this time period from 1995 to 2000. From 1995 to 2000, 60 percent of all reported strandings occurred during May and June.

Most of the stranded sea turtles in Virginia have been loggerheads, but endangered Kemp's ridley and leatherback sea turtles have also stranded. Out of 1,067 total strandings in May and June from 1995 to 2001, 958 loggerheads, 59 Kemp's ridleys, 17 leatherbacks, 1 green, and 32 unidentified turtles were found. The majority of the stranded turtles have been of the juvenile/immature life stage.

While some turtles with traumatic carapace injuries, propeller-like wounds or imbedded fish hooks (injuries not associated with pound nets) are documented each year, no cause of mortality is obvious for the majority of turtles that strand in Virginia. While current stranding levels are higher than in previous years, relatively healthy animals have been stranding on Virginia beaches for at least 20 years. Bellmund, *et al.* (1987) found that during spring stranding events in 1983 and 1984, all turtles examined seemed healthy with the exception of one injured and two emaciated turtles.

Although fresh dead turtles were found earlier in the season, most of the stranded turtles reported in the spring of 2000 and 2001 were moderately to severely decomposed. The ability to conduct necropsies is compromised by the condition of the stranded animals, and severely decomposed turtles are not usually necropsied. The majority of the stranded turtles that were examined by necropsy in 2000 and 2001 had good fat stores, suggesting that the animals were in good health prior to their death. Many of the necropsied turtles had full stomachs, and contents included blue crab, horseshoe crab, and fish. Twenty-three of 66 loggerheads necropsied between May and December 2001 contained fish parts. The majority of the 2001 necropsies were conducted on animals that stranded in the Western Bay and on the Chesapeake Bay side of the eastern shore.

The distribution of sea turtle strandings in Virginia varies slightly from year to year, but historically, most of the spring strandings in Virginia have been documented on the ocean facing beaches south of Cape Henry and the inshore beaches in the southern Chesapeake Bay. For instance, the majority of 1999 spring strandings occurred offshore in the Virginia Beach Oceanside area around the mouth of the Chesapeake Bay, but the majority of the spring strandings in 1998, 2000, and 2001 occurred in inshore waters with concentrations around the southern tip of the eastern shore and the southern portion of the Chesapeake Bay around Virginia Beach and Hampton. Strandings in 2001 were of particular concern because the majority of the strandings (approximately 65 percent) in May and June occurred along the Chesapeake Bay side of the eastern shore of Virginia and along the southern tip near Kiptopeke and Fisherman's Island, indicating a possible localized interaction. It is possible that some Virginia Chesapeake Bay turtle strandings are swept into the Chesapeake Bay from elsewhere, as the water patterns and currents entering the Chesapeake Bay could concentrate sea turtle strandings around the mouth. However, it is likely that in the Virginia Chesapeake Bay, most mortalities have occurred relatively close to the stranding location (Lutcavage 1981). Further, it has been estimated that strandings on ocean facing beaches represent, at best, only approximately 20 percent of the at-sea nearshore mortality, as only those turtles killed close to shore are most likely to strand (NMFS SEFSC 2001).

Factors Contributing to Strandings

In response to the long term trend in elevated sea turtle strandings, NMFS instituted a program in 2001 to investigate interactions between sea turtles and Virginia fisheries during the historical stranding period. This program included inshore and offshore aerial surveys, traditional and alternative platform observer coverage of gillnet and pound net fisheries, and sonar surveys of pound net leaders.

There is a complex mix of fisheries operating in Virginia Chesapeake Bay and ocean waters during May and June, including large and small mesh gillnet fisheries, whelk and crab pot fisheries, haul seine fisheries, scallop dredge and trawl fisheries, and the pound net fishery. At the time of the 2001

strandings, NMFS observed a number of the fisheries active in Virginia and did not detect significant sea turtle mortality. However, additional observer coverage is needed to adequately determine the level of sea turtle interactions with the various fisheries operating during the spring.

The federally managed monkfish large mesh gillnet fishery (approximately 10–12 inch (25.4–30.5 cm) mesh) had approximately 41–percent observer coverage in waters off Virginia from May 1 until it stopped operating off Virginia on May 29 when the fleet moved northward. In Virginia, 107 monkfish trips were observed, and one dead and two live loggerhead turtles were incidentally captured in this fishery. In May and June 2001, the monkfish fishery landed approximately 16 percent of the total landings with gillnet gear in Virginia. Two 10–14 inch (25.4–35.6 cm) mesh gillnet fisheries, the black drum and sandbar shark gillnet fisheries, occurred in state waters, in the vicinity of the highest number of turtle strandings (along the tip of the eastern shore). The black drum fishery had approximately 8–percent observer coverage during May and June, and no turtle takes were observed. Additionally, almost all of the black drum fishing effort ceased at the beginning of June, and there was not a large amount of sandbar shark gillnet effort during the spring stranding period. No large mesh gillnet fishing in the vicinity of the mouth of the Chesapeake Bay occurs from June 1 to June 30; during this time, gillnets with a stretched mesh size greater than 6 inches (15.2 cm) are prohibited in Virginia's portion of the Chesapeake Bay south of Smith Island.

During 2001, the small mesh gillnet fisheries (smaller than 6 inch (15.2 cm) mesh) were also considered as a potential contributor to the high sea turtle strandings. However, the amount of gillnet effort occurring in the Chesapeake Bay waters during May and June appears to be relatively small (e.g., approximately 11 percent of total Virginia Chesapeake Bay landings). Further, aerial surveys were conducted by the Virginia Institute of Marine Science (VIMS) in the inshore waters of the Chesapeake Bay and minimal gillnet effort was observed during June 2001. Of the total gillnet landings in Virginia offshore and inshore waters during May and June 2001, small mesh gillnet landings for a variety of species, including Atlantic croaker and dogfish, represented approximately 82 percent. NMFS observed 2 percent of the Atlantic croaker fishery and 12 percent of the dogfish fishery during that time; no turtle takes were observed. While small mesh gillnets may entangle sea turtles, the level of interaction in Virginia waters during the spring is not expected to be high.

The Virginia Marine Resources Commission (VMRC) restricted the use of trawls in Virginia's portion of the Chesapeake Bay in 1989, and no trawling effort occurs in the Chesapeake Bay. Aerial surveys, landings data, and dock surveys indicate that limited trawling occurs in Federal waters offshore of Virginia during May and June; approximately 18 percent of total ocean landings in May and June 2001 were by scallop trawl gear (2,456 metric tons of 13,739 metric tons total). The scallop dredge fishery operates off of Virginia during May and June, consisting of approximately 78 percent of the total ocean landings in May and June 2001. Sea turtle interactions with scallop dredges have been observed, but the magnitude of the interactions with this gear type has not been determined. While additional information is needed, this fishery may contribute to some sea turtle mortality documented on Virginia ocean side beaches.

While whelk and crab pots may contribute to sea turtle mortality, it is unlikely that interactions with this gear type would result in a time and area specific mass stranding event. The majority of the whelk pot effort is found offshore, particularly outside Virginia's state waters, and few fishermen set their pots inside the Chesapeake Bay (Mansfield *et al.*, 2001). The peak spring months for the whelk pot fishery are April and May. Crab pot fishing occurs throughout the Chesapeake Bay, including along the eastern shore and tip of the Delmarva Peninsula. Approximately 36 percent of the total Virginia Chesapeake Bay landings in May and June 2001 were from crab pots. Sea turtles may become entangled in crab pot gear, but due to the nature of the gear and manner in which it's fished, interactions are difficult to detect. As such, the magnitude of this fishery's contribution to Virginia sea turtle strandings is not known, but it is unlikely that sea turtle interactions with crab pots result in a mass mortality event.

While a number of fisheries may contribute to sea turtle strandings, available data indicate that large mesh and stringer pound net leaders result in sea turtle entanglement and that the pound net fishery was a likely cause of a significant portion of the sea turtle mortality in the Chesapeake Bay during the spring of 2001. Pound nets are set throughout the Chesapeake Bay, in both Maryland and Virginia waters. In Virginia, the majority of pound net stands are located around the Virginia shore south of the mouth of the Potomac River (south of Smith Point), around the mouth of the Rappahannock River, around the mouth of the York River/Mobjack Bay, and along the southern portion of the eastern shore of Virginia. Landings by pound nets represented approximately 40 percent of the total landings in the Virginia Chesapeake Bay during May and June 2001.

During 1980, high strandings were documented in areas where there were large numbers of working pound nets (Lutcavage, 1981). Additionally, pound nets are the dominant fishing gear observed immediately offshore of the Kiptopeke area and along the southern portion of the Virginia eastern shore, where most of the strandings occurred in the spring of 2001 and a concentration of spring strandings were documented in 1998 and 1999.

Stringer leaders are found in the western Chesapeake Bay, around the tip of Mobjack Bay and just south of the mouth of the Potomac River, near Reedville. Strandings during 1998 to 2001 were observed on the western shore of the Chesapeake Bay in the vicinity of stringer pound net leaders, but strandings during these years were almost always highest in other areas of the Chesapeake Bay (e.g., during the spring of 2001, strandings were highest along the eastern shore). High turtle mortalities in late May and early June in Virginia have previously been attributed to entanglement in large mesh and stringer pound net leaders in the Chesapeake Bay (Lutcavage, 1981; Bellmund, *et al.* 1987). Specifically, pound net entanglement has been determined to account for up to 33 percent of sea turtle mortality in the Chesapeake Bay during some summers (Lutcavage and Musick 1985). A Virginia pound net survey in the 1980s documented ''many dead loggerheads and one [Kemp's] ridley hung by heads or limbs in area poundnet hedging [leaders]'' (Lutcavage, 1981). This study also determined that based upon constriction features on stranded turtles, some beached carcasses had previously floated free of pound net leaders and that it was plausible that unidentified pound net leader deaths could account for many of the carcasses for which no mortality sources have been identified. However, five turtles entangled in pound net leaders were examined during 1984 and none of these turtles became disentangled by natural causes. These sea turtles instead completely decomposed in situ within 5 weeks (Bellmund, *et al.* 1987). While additional information is necessary to

determine how often sea turtles become disentangled from pound net leaders, it is plausible that turtles may become dislodged from pound net leaders either by the strong current in certain areas of the Chesapeake Bay, the decomposition process, or fishermen disentangling dead sea turtles if detected.

Data collected in 1983 and 1984 found turtle entanglement in pound nets with small mesh leaders (defined as 8 to 12 inch (20.3 to 30.5 cm) stretched mesh) to be insignificant, but in 173 pound nets examined with large mesh leaders (defined as >12 to 16 inch (>30.5 to 40.6 cm) stretched mesh), 0.2 turtles per net were found entangled (30 turtles; Bellmund, *et al.*, 1987). This study also found that in 38 nets examined with stringer mesh, 0.7 turtles per net were documented entangled (27 turtles). The sampling area was concentrated in the western Chesapeake Bay, with some sampling occurring in other portions of the Virginia Chesapeake Bay. Turtle entanglements in pound net leaders began in mid-May, increased in early June, and reached a plateau in late June (Bellmund, *et al.* 1987). In 1984, no entanglements were observed after late June. Surveys in 1979 and 1980 also found that most of the pound net leaders that captured sea turtles consisted of large mesh (12 to 16 inches (30.5 to 40.6 cm)) and were found in the lower Chesapeake Bay. Anecdotal reports from North Carolina pound net fishermen during the early 1980s stated that sea turtle entanglements occurred in pound net leaders with approximately 8 inch (20.3 cm) mesh and greater. While smaller mesh nets may pose some entanglement risk to sea turtles, the degree of entanglement has not been documented as well as entanglement in stretched mesh leaders 12 inches (30.5 cm) and greater. Leader mesh greater than or equal to 12 inch (30.5 cm) stretch and leaders with stringers likely account for the largest number of sea turtle entanglements in pound net gear in the Virginia Chesapeake Bay.

NMFS recognizes that the majority of scientific information on sea turtle and pound net interactions in Virginia dates back to the 1980s. However, the factors involved in entanglement, namely the size of sea turtles' heads and flippers relative to mesh size and stringers, are the same today as they were in the 1980s. NMFS anticipates that sea turtles will continue to interact with large mesh and stringer leaders in the Chesapeake Bay. In fact, during the spring of 2001, several sea turtles were documented in association with pound net leaders. VMRC law enforcement agents documented one live and three dead sea turtles in pound net leaders along the eastern shore. The live turtle was entangled in a leader with greater than 12 inches (30.5 cm) stretched mesh, but the leader mesh size of the other entanglements was not documented. Additionally, during June of 2000, VMRC law enforcement agents reported disentangling two live sea turtles from two eastern shore leaders with greater than 12 inches (30.5 cm) stretched mesh. Although it is possible that some turtle carcasses drift into pound net leaders post-mortem, sea turtles have been documented entangled in pound net leaders where entanglement was determined to be the cause of death.

Sea turtle entanglements in pound net leaders are difficult to detect. Sea turtles observed in leaders in the spring of 2001 were found at the surface. Due to the poor water clarity in the Chesapeake Bay, turtles entangled below the surface cannot be observed. Additionally, pound net fishermen do not typically tend their leaders, so a turtle entangled in the leader, even at the surface, may go unnoticed. It is likely that significantly more sea turtles are entangled in pound net leaders than are observed or reported (Lutcavage 1981). Similarly, it is probable that significantly higher turtle mortality occurred over the past 23 years than was documented on Virginia beaches. Since many dead turtles fail to strand where they can be documented by the STSSN, the number of stranded turtles represents an unknown sub-sample of the total mortality that occurs each spring.

NMFS has investigated other potential causes for the annual spring sea turtle mortality event, but natural or non-fishing related anthropogenic causes are not consistent with the nature of the strandings. The absence of other species in the most recent stranding events and the absence of high sea turtle strandings in other Atlantic states during the time period when turtles are migrating are inconsistent with cold stunning, a toxic algae bloom, epizootic or other disease. Further, the stranded turtles exhibited no major traumatic injuries such as might be caused by dredging or blasting. Conversely, the circumstances surrounding the spring strandings are consistent with fishery interactions, which include relatively healthy turtles prior to the time of their death, a large number of strandings in a short time period, no external wounds on the majority of the turtles, no common characteristic among stranded turtles that would suggest disease as the main cause of death, and turtles with fish in their stomach. Sea turtles are generally not agile enough to capture finfish under natural conditions, and thus would only consume large quantities of finfish by interacting with fishing gear or bycatch (Mansfield, *et al.* 2002, Bellmund, *et al.* 1987, Shoop and Ruckdechel 1982).

Based on the nature and location of turtle strandings, the type of fishing gear in the vicinity of the greatest number of strandings, the lack of observed takes in other fisheries operating in Virginia waters during the 2001 stranding period, the known interactions between sea turtles and large mesh and stringer pound net leaders, and several documented sea turtle entanglements in pound net leaders, NMFS concluded that pound nets were a likely cause of a significant number of the high sea turtle strandings in Virginia in May and June 2001.

As a result of information obtained in 2001, NMFS implemented an emergency rule that required all pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and all pound net leaders with stringers to be tied up in the Virginia waters of the mainstem Chesapeake Bay and the tidal waters of the James, York, and Rappahannock Rivers from June 19 to July 19, 2001 (66 FR 33489 June 22, 2001). Sea turtle strandings decreased after this rule was in effect, but as a result of delays in determining which fishery caused the strandings and in implementing management measures, the rule was enacted after the period of the highest sea turtle strandings. The emergency measures likely reduced subsequent entanglements in large mesh and stringer pound net leaders. While fishery interactions may vary from year to year, NMFS believes it is likely that pound nets contribute to the high sea turtle strandings documented every spring.

Impacts on Sea Turtles

The annual high mortality in Virginia in May and June is of concern for the following reasons: (1) The level of spring strandings in Virginia has been high for approximately 20 years and elevated for the last 5 years, and it is believed that high strandings will continue to occur during this time period; (2) strandings over the past 4 years have been concentrated along the southern tip of the eastern shore, suggesting a potential localized interaction; (3) approximately 50 percent of the Chesapeake Bay loggerhead foraging population is composed of the northern subpopulation, a subpopulation that may be declining; and (4) most of the stranded turtles have been juveniles, a

life stage found to be critical to the long term survival of the species.

Most loggerheads in U.S. waters come from one of four genetically distinct nesting subpopulations. A subpopulation that nests in south Florida is much larger and has shown recent increases in numbers of nesting females. The increase in documented sea turtle mortalities in Virginia could partly be a function of the increase in the southern subpopulation of loggerheads, which make up approximately 50 percent of the loggerheads found in the Chesapeake Bay. The northern subpopulation that nests from northeast Florida through North Carolina is much smaller and nesting numbers are stable or declining. Genetic studies indicate that approximately one-half of the juvenile loggerheads inhabiting Chesapeake Bay during the spring and summer are from the smaller, northern subpopulation (TEWG 2000; Norrgard, 1995). Approximately 3,800 nesting females are estimated for the northern subpopulation of loggerhead sea turtles (TEWG 2000). The impact of the high level of mortality experienced by loggerhead turtles each spring off Virginia on the population's ability to recover is of significant concern. The northern subpopulation produces 65 percent males, while the southern subpopulation is estimated to produce 80 percent females (NMFS SEFSC 2001). As males do not appear to show the same degree of site fidelity as females, it is possible that the high proportion of males produced in the northern subpopulation are an important source of males for all loggerheads inhabiting the Atlantic. The loss of the male contribution from the northern subpopulation may restrict gene flow and result in a loss of genetic diversity to the loggerhead population as a whole. The loss of females from the northern subpopulation may preclude future reproduction, reducing the likelihood of both future survival and recovery of the northern subpopulation of loggerheads. While the size of the southern subpopulation of loggerheads appears to be increasing, the high level of spring sea turtle mortality in Virginia must be reduced to help ensure that the southern subpopulation of loggerheads continues to recover.

Most of the turtles stranding in Virginia waters during the spring are of the juvenile/immature life stages. The specific age at maturity for most sea turtles is unknown; the age of maturity for loggerheads occurs from approximately 21–35 years (TEWG 2000). Studies have concluded that sea turtles must have high annual survival as juveniles and adults to ensure that sufficient numbers of animals survive to reproductive maturity to maintain stable populations (Crouse, *et al.* 1987, Crowder, *et al.*, 1994, Crouse, 1999). Given their long maturation period, relatively small decreases in annual survival rates of both juvenile and adult loggerhead sea turtles may destabilize the population, thereby potentially reducing the likelihood of survival and recovery of the population. As such, the historical high level of mortality in Virginia plus the increase in loggerhead mortality documented during the last several years may negatively affect the recovery of the loggerhead population.

Modification of Pound Net Gear

To conserve sea turtles, the Assistant Administrator, NOAA, (AA) proposes to prohibit the use of all pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries from May 8 to June 30 each year. The area where this gear restriction would apply includes the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia state line (approximately 37° 55′ N. lat., 75° 55′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.); the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55′ N. lat, 76° 30.40′ W. long.); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.).

This prohibition of pound net leaders would be effective from 12:00 a.m. local time on May 8 through 11:59 p.m. local time on June 30 each year. For the duration of this proposed gear restriction, fishermen would be required to stop fishing with pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers in the designated area.

From 1994 to 2001, the average date of the first reported stranding in Virginia was May 15. However, sea turtle mortality would have occurred before the animals stranded on Virginia beaches. In order for the proposed pound net restrictions to reduce sea turtle interactions with pound net leaders and reduce any subsequent strandings on Virginia beaches, the proposed measures should go into effect at least 1 week prior to the stranding commencement date, or on May 8 each year. Based upon STSSN strandings data, strandings in Virginia typically remain elevated until June 30, indicating that turtles may be vulnerable to entanglement in pound net leaders until this time. Implementation of the proposed gear restrictions during this time period is expected to prevent the reoccurrence of sea turtle takes in the pound net fishery in the spring and high numbers of strandings in Virginia.

In addition to establishing the restriction on leader mesh size and leaders with stringers, this proposed rule would also create a framework mechanism by which NMFS may make changes to the restrictions and/or their effective dates on an expedited basis in order to respond to new information and protect sea turtles. Under this framework mechanism, if NMFS makes a determination, for example, due to water temperature and the timing of sea turtles' migration, that sea turtles may still be vulnerable to entanglement in pound net leaders after June 30, the AA may extend the effective dates of this regulation. Should an extension of the effective dates of the prohibition of pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers be necessary, NMFS would issue a final rule to be effective upon publication in the **Federal Register** explicitly stating the duration of the extension. The extension would not exceed 30 days from the date of its publication.

From May 8 to June 30, NMFS intends to continue to closely monitor sea turtle stranding levels and other fisheries active in the Chesapeake Bay and nearshore and offshore Virginia waters, including pound net leaders with a stretched mesh size measuring less than 12 inches (30.5 cm). If monitoring of pound net leaders reveals that one sea turtle is entangled alive in a pound net leader less than 12 inches (30.5 cm) stretched mesh or that one sea turtle is entangled dead and NMFS determines that the entanglement contributed to its death, then NMFS may determine that additional restrictions are necessary to conserve sea turtles and prevent entanglements. Such additional restrictions may include reducing the allowable mesh size for pound net leaders or prohibiting all pound net leaders regardless of mesh size in Virginia waters. Should NMFS determine that an additional restriction is warranted, NMFS would immediately file a final rule with the Office of the **Federal Register**. Such a rule would explicitly state the new mandatory gear restriction as well as the time period, which may also be extended for up to 30 days through a subsequent rule. The

area where additional gear restrictions would apply includes the same area as the initial restriction, namely the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia State line (approximately 38° N. lat.) to the COLREGS line at the mouth of the Chesapeake Bay, and portions of the James River, the York River, and the Rappahannock River.

In 2001, NMFS implemented an emergency rule that prohibited the use of all pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and the tidal waters of the James, York, and Rappahannock Rivers from June 19 to July 19. While sea turtles may interact with smaller mesh leaders (less than 12 inch (30.5 cm) stretched mesh), NMFS believes that prohibiting the use of leaders greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers will reduce most of the potential sea turtle entanglements in pound net leaders, and subsequent strandings on Virginia beaches. NMFS chose to restrict the use of leaders with stretched mesh greater than or equal to 8 inches (20.3 cm) in 2001 because there is some information indicating that sea turtles have been entangled in 8 inch (20.3 cm) stretched mesh and because an unprecedented number of loggerheads had already stranded in the spring of 2001 at the time of the emergency rule. While there is evidence to suggest that turtle entanglements may occur in leaders with stretched mesh smaller than 12 inches (30.5 cm), the majority of the scientific information to date indicates that leaders greater than 12 inches (30.5 cm) stretched mesh and leaders with stringers result in the majority of sea turtle pound net entanglements in the Virginia Chesapeake Bay. NMFS expects that prohibiting leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh will be sufficient to protect sea turtles, while minimizing the impacts to the pound net fishery. However, as mentioned previously, should monitoring reveal one sea turtle entangled alive or one sea turtle entangled dead, and NMFS determines that the entanglement contributed to its death, in a pound net leader less than 12 inches (30.5 cm) stretched mesh, NMFS may impose additional restrictions in May or June on an expedited basis.

Classification

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

NMFS has prepared an initial regulatory flexibility analysis that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the **SUMMARY** section. A summary of the analysis follows:

The fishery affected by this proposed rule is the Virginia pound net fishery in the Chesapeake Bay. According to the 2001 VMRC survey data, of the 160 pound net licenses issued in Virginia, where one license is assigned to each pound net, 72 licenses are fishing in the waters potentially affected by this proposed rule. Based upon data from 1999 to 2001, Virginia pound net fishermen earned $84,300 in annual revenues and landed 352,300 pounds of fish annually on average.

The proposed action prohibits pound net leaders with 12 inches (30.5 cm) and greater stretched mesh, as well as those using stringers, from May 8 to June 30. The non-preferred alternative 1 prohibits pound net leaders with 8 inches (20.3 cm) and greater stretched mesh, as well as those using stringers, from May 8 to June 30. The non-preferred alternative 2 prohibits all pound net leaders from May 8 to June 30. Finally, the non-preferred alternative 3 prohibits pound net leaders with greater than 16 inches (40.6 cm) stretched mesh, and requires pound net leaders with stringers to drop the mesh to 9 feet (2.7 m) below mean low water and to space stringer lines at least 3 feet (0.9 m) apart, from May 15 to approximately June 15.

According to VMRC data from 1999 to 2001, 27 fishermen were fishing approximately 64 pound nets from May 8 to June 30. During this period, fishermen earned revenues of $16,700 and landed 69,300 pounds of fish, on average. Prohibiting the use of all pound net leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers from May 8 to June 30 would potentially affect approximately 11 fishermen fishing approximately 24 pound nets. Under the worst case scenario in which fishermen choose not to replace their leaders with nets less than 12 inches (30.5 cm) stretched mesh, but remove their leaders altogether between May 8 and June 30, forgone industry revenues would be $192,000 and the cost to remove and replace pound net leaders would be $16,700, resulting in an industry total of $208,700. A fisherman affected by this proposed rule would on average incur revenue losses of $16,700 from not fishing and a cost of $1,600 to remove and replace leaders on their pound nets in the worst case. A fisherman's annual revenue in this scenario will be reduced by 22 percent on average, given annual revenues of $84,300. If fishermen do replace their leader with one with less than 12 inches (30.5 cm) stretched mesh, and it is operational, then the economic impact of this alternative is $1,600 to remove and replace the leader plus approximately $8,300 for a compliant leader. While there may be additional revenue differences associated with fishing with a smaller leader, those potential differences cannot be determined.

If NMFS determines that this proposed rule should be extended, the economic impacts to the pound net fishery will be greater. Based on the 2001 VMRC data, weekly revenues per fisherman from May 8 to June 30 were $2,200. For every week extended, forgone industry revenues would be $23,100, in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. Therefore, if the extension was until July 15, forgone industry revenues would be approximately $46,200. Given a 2–week extension, a fisherman's annual revenues would now be reduced by 27 percent, versus 22 percent without the extension, under the worst case scenario. If fishermen were able to switch to a smaller mesh size leader and the requirement is extended, no additional cost would be incurred.

Should additional management measures be implemented as a result of information on pound net leader and sea turtle interactions obtained via monitoring, the restrictions may affect either those pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh or all pound net leaders regardless of mesh size in the Virginia waters of the mainstem Chesapeake Bay. If pound net leaders greater than or equal to 8 inches (20.3 cm) are prohibited, approximately 13 fishermen fishing approximately 31 pound nets would be affected. This number of affected participants includes those pound net fishermen with previously restricted leaders. From May 8 to June 30, forgone industry revenues would be $237,400 and the cost to remove and replace pound net leaders would be $20,300, for a total of $257,700 in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. If all pound net leaders, regardless of mesh size, are prohibited, 27 fishermen fishing approximately 64 pound nets would be affected. From May 8 to June 30, forgone industry revenues would be

$444,600 and the cost to remove and replace pound net leaders would be $43,200, for a total of $487,800. The costs to an individual fisherman under either of these additional measures would be the same as the initial gear restriction; a fisherman would on average incur revenue losses of $16,700 from not fishing and a cost of $1,600 to remove and replace leaders on their pound nets between May 8 and June 30 in the worst case scenario.

Taking no action would not have economic consequences, at least in the short term. The impacts of the non-preferred alternative 1 would be the same as those previously described for the prohibition of pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and stringers; approximately 13 fishermen fishing approximately 31 pound nets would be affected by the non-preferred alternative 1. From May 8 to June 30, forgone industry revenues would be $237,400 and the cost to remove and replace pound net leaders would be $20,300, for a total of $257,700 in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. The impacts of the non-preferred alternative 2 would be the same as those previously described for the prohibition of all pound net leaders; approximately 27 fishermen fishing 64 pound nets would be affected by the non-preferred alternative 2. From May 8 to June 30, forgone industry revenues would be $444,600 and the cost to remove and replace pound net leaders would be $43,200, for a total of $487,800. Under the non-preferred alternative 3, 7 fishermen fishing approximately 14 pound nets would be affected. From May 8 to June 30, forgone industry revenues would be $125,000 and the cost to remove and replace pound net leaders would be $11,200, for a total of $136,200 in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. The costs to an individual fisherman under all of the alternatives would be the same; a fisherman would on average incur revenue losses of $16,700 from not fishing and a cost of $1,600 to remove and replace leaders on their pound nets between May 8 and June 30. Under the proposed action, the non-preferred alternative 1 and the non-preferred alternative 3, if fishermen are able to switch to a smaller leader mesh size, and it is operational, the economic impacts would be $1,600 to remove and replace the leader plus approximately $8,300 for a compliant leader.

Dated: March 25, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries.

List of Subjects

50 CFR Parts 222 and 224

Administrative practice and procedure, Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 50 CFR parts 222, 223, and 224 are proposed to be amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 222.102, the definition of ''Pound net leader'' is added in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Pound net leader means a long straight net that directs the fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers are vertical lines in a pound net leader that are spaced a certain distance apart and are not crossed by horizontal lines to form mesh.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.205, paragraphs (b)(14) and (15) are revised and paragraph (b)(16) is added to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED;

(15) Fail to comply with the restrictions set forth in § 223.206(d)(2)(v) regarding pound net leaders; or

(16) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

* * * * *

3. In § 223.206, paragraph (d)(2)(v) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(2) * * *

(v) *Gear requirement—pound net leaders*—(A) *Restrictions on pound net leaders.* During the time period of May 8 through June 30, any pound net leader in the waters described in paragraph (d)(2)(v)(B) of this section must have a mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers. Any pound net leader with mesh measuring 12 inches (30.5 cm) or greater or any pound net leader with stringers must be removed from the waters described in paragraph (d)(2)(v)(B) of this section prior to May 8 and may not be reset until July 1 unless that date is extended by the AA pursuant to § 223.206(d)(2)(v)(C).

(B) *Regulated waters.* The restrictions on pound net leaders described in paragraph (d)(2)(v)(A) of this section apply to the following waters: the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia State line (approximately 37° 55′ N. lat., 75° 55′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.); the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55′ N. lat, 76° 30.40′ W. long.); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.).

(C) *Expedited modification of restrictions and effective dates.* If NMFS receives information that one sea turtle is entangled alive or that one sea turtle is entangled dead, and NMFS determines that the entanglement contributed to its death, in pound net leaders that are in compliance with the restrictions described in paragraph (d)(2)(v)(A) of this section on pound net leaders in the waters identified in (d)(2)(v)(B) of this section, the AA may issue a notification modifying the restrictions on pound net leaders as necessary to protect threatened sea turtles. Such modifications may include, but are not limited to, reducing the maximum allowable mesh size of pound net leaders and prohibiting the

use of pound net leaders regardless of mesh size. In addition, if information indicates that a significant level of sea turtle strandings will likely continue beyond June 30, the AA may issue a final rule extending the effective dates of the restrictions as necessary to protect threatened sea turtles.

* * * * *

PART 224— ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; and 16 U.S.C. 1361 *et seq.*

2. In § 224.104, paragraph (e) is added to read as follows:

§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

* * * * *

(e) Fishermen fishing pound nets in waters identified in § 223.206(d)(2)(v)(B) in compliance with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles in pound net leaders.

[FR Doc. 02–7708 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 61
Friday, March 29, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to request an extension for a currently approved information collection in support of USDA's Biological Control Documentation Program dealing with documenting the importation and release of foreign biological control agents.

DATES: Comments on this notice must be received by June 3, 2002, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Jack R. Coulson, director, ARS Biological Control Documentation Center, National Program Staff, National Agricultural Library, ARS, USDA, 10301 Baltimore Avenue, Beltsville, MD 20705–2330.

FOR FURTHER INFORMATION CONTACT: Jack R. Coulson, Director, ARS Biological Control Documentation Center, (301) 504–6350.

SUPPLEMENTARY INFORMATION:

Title: USDA Biological Shipment Record—Beneficial Organisms: Foreign/Overseas Source (AD–941); Quarantine Facility (AD–942); and Non-Quarantine (AD–943).

OMB Number: 0518–0013.

Expiration Date of Approval: August 31, 2002.

Type of Request: To extend a currently approved information collection.

Abstract: The purpose of the Biological Control Documentation Program is to record the importation (AD–941), release from quarantine (AD–942), and shipment and/or field release/recolonization (AD–942 and AD–943) of foreign/introduced beneficial organisms (pollinators and biological control agents for invasive species). The information collected is entered into the USDA ''Releases of Beneficial Organisms in the United States and Territories'' (ROBO) database, established in 1984. It is a cooperative program among USDA and other federal agencies, state governmental agencies, and U.S. universities. The use of the forms and the information provided is voluntary. The program is for the benefit of biological control research and action agency personnel, taxonomists, federal and state regulatory agencies, agricultural administrators, and the general public. The AD–941 has been computerized and efforts are underway to replace the other paper forms with computerized information collection, and when completed, only those units for which computerized input is not possible would use the forms.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1/12 hour per response.

Non-Federal Respondents: Universities, and state and local governments.

Estimated Number of Non-Federal Respondents: 40.

Estimated Number of Responses per Respondent: An average of 3 (range 1–30).

Estimated Total Annual Burden on Respondents: 10 hours.

Copies of the 3 forms used in this information collection, and information on the computerized form can be obtained from Jack R. Coulson, ARS Biological Control Documentation Center, at (301) 504–6350.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Jack R. Coulson, Director, ARS Biological Control Documentation Center, National Program Staff, ARS, USDA, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD 20705–2350.

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

Dated: March 7, 2002.

Judy St John,

Associate Deputy Administrator, Plant Sciences, National Program Staff, Agricultural Research Service, Department of Agriculture.

[FR Doc. 02–7632 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency; Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) to request extension of the information collection currently approved for Form CCC–10, used in support of the CCC and FSA Farm Loan Programs (FLP). Form CCC–10 was approved for use by the Office of Management and Budget (OMB) on November 16, 2001, for a period of six months.

DATES: Comments on this notice must be received on or before May 28, 2002, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, USDA, Farm Service Agency, Price Support Division, 1400

Independence Avenue, SW., STOP 0512, Washington, DC 20250–0512; Telephone (202) 720–7935; Electronic mail: *chris—kyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization to File a Financing Statement and Related Documents.

OMB Control Number: 0560–0215.

Expiration Date of Approval: March 31, 2002.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: CCC–10 is necessary to: (a) gather or verify basic data regarding the CCC or FSA loan applicant required on a financing statement that is filed to perfect a security interest in collateral used to secure a loan; and (b) obtain their permission to file a financing statement prior to the execution of a security agreement.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Individual farmers, farm or other business entities.

Estimated Number of Respondents: 207,500.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden On Respondents: 120,350 hours.

Comments are invited on the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Chris Kyer, Program Specialist, USDA, Farm Service Agency, Price Support Division, 1400 Independence Avenue, SW., STOP 0512, Washington, DC 20250–0512.

Comments will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on March 8, 2002.

James R. Little,

Executive Vice President, CCC and Administrator, Farm Service Agency.

[FR Doc. 02–7630 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection from the U.S. population. The study will collect data from two panels of consumers on their willingness to pay for reductions in the risk of foodborne illness using alternative risk reduction technologies.

DATES: Comments on this notice must be received by June 3, 2002, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Katherine Ralston, Diet, Safety, and Health Economics Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St. NW., Washington, DC 20036–5831. Submit electronic comments to *kralston@ers.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Katherine Ralston, 202–694–5463.

SUPPLEMENTARY INFORMATION:

Title: Estimating Consumer Benefits of Improving Food Safety.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for the collection of survey data from two panels of food product consumers.

Abstract: The U.S. Department of Agriculture (USDA) has responsibility to ensure that meat and poultry products are safe for human consumption. The Economic Research Service (ERS), as the lead economic research arm of the Department, has responsibility to conduct economic research on the social benefits of policies and programs designed to reduce and prevent illnesses caused by microbial pathogens.

ERS has estimated the costs of medical treatment and lost productivity, and premature death from diseases caused by five microbial pathogens at $6.9 billion annually. These costs almost certainly understate the true social costs of these illnesses since they do not measure the consumer's willingness to pay to prevent foodborne disease. Research is needed to (1) determine the extent to which a willingness to pay approach would boost assessments of the economic value of reductions in foodborne illnesses, and (2) to identify factors that influence consumers' valuation of these reductions, including personal and household characteristics, and information the consumer receives about foodborne illness.

To date, most food-related risk valuation studies indicated that consumers would pay modest amounts in excess of the products' purchase price to decrease low-level food risks. These food safety studies observed that, contrary to theoretical expectation, the average value of risk reduction did not vary with the magnitude of risk reduction, regardless of elicitation method and type of risk. Several reasons could have caused this phenomenon. People have difficulties handling risk decisions, and some do not or cannot tell one magnitude of risk reduction from another. People also may hold a subjective threshold level of the baseline risk below which the different magnitudes of risk reduction are irrelevant. People also tend to focus their generic concern for safer food on safety levels rather than differences in the level of risk, and therefore any improvement toward complete safety is acceptable and the level of improvement does not matter. Some subjects place more weight on their risk perception than on the risk information provided during the experiment, and others simply do not pay close attention to the evaluation task when asked to reveal their willingness to pay for risk reduction.

There are two reasons why the current studies offer limited information. First, the range of alternative risk reduction strategies has been rather restrictive, limited either to a private action or a collective investment, not both. Second, with the exception of Fox et al. (JA Fox, JF Shogren, DJ Hayes, JB Kliebenstein 1998. ''CVM–X: Calibrating Contingent Values with Experimental Auction Markets,'' *American Journal of Agricultural Economics* 80(3):455–465) there has not been a direct comparison

of the elicitation methods for food safety values. Fox et al. explored hypothetical-survey and actual-experimental-auction preferences for irradiated pork. Incorporating a broader set of risk reduction strategies and a direct comparison of elicitation devices will provide more understanding about the nature of expressed values, and will strengthen the validity and usefulness of evaluation results. In addition to providing refinements in valuation techniques so that empirical results are consistent with economic theory, better understanding of what the expressed values mean is an important step toward incorporating subjective value measures into policy decisions.

This pilot study will estimate consumers' willingness to pay to reduce the risk of foodborne illness using two different methods, namely contingent valuation methods and recently developed market-based methods. Two surveys will be administered to panels of consumers through the Internet. One survey (Part A) is a contingent valuation survey focusing on responses to different information about foodborne illness risk levels, severity, duration, and mortality rates. The second survey (Part B) uses a market-based method, measuring how consumers change food intake in response to risk information. The changes in consumption patterns and food expenditures of consumers receiving risk information will be used to derive the willingness to pay for reductions in foodborne illness risk.

The contingent valuation survey will be administered to a panel of food product consumers who have already been recruited to participate in multiple surveys by a private computer research firm. The survey for Part B will be administered similarly, but the computer research firm administering the survey is developing panels and will advertise over the Internet for additional participants. The panel members recruited to complete the Part A survey will receive free Internet service and monetary compensation for their efforts. The panel members recruited to complete the Part B survey will receive monetary compensation.

Administering the surveys through the Internet will reduce the burden on respondents because the survey questions can be answered more quickly by computer than over the phone or in person, and because respondents can complete the surveys at a time convenient to them. For Part A, household and personal characteristics of the participants are already available and will not have to be obtained from the survey. For Part B, the panels will be chosen to match the U.S. Census totals for cells stratified by age, gender, ethnicity, region, education, and income.

Part A: The contingent valuation survey will present a panel of consumers with information about the risk of foodborne illness associated with chicken, ground beef, and lettuce. Respondents will be asked how much they would be willing to pay for a food guaranteed to have a lower risk of contamination, where the reduction in risk is specified numerically and graphically. The panel will also receive information about the potential severity and duration of an illness if it were to occur. The results will provide estimates of the value of reductions in selected foodborne risks, spanning a range of symptom severity (including mortality) and symptom duration.

Part B: The general survey design will consist of three sections. Section 1 will elicit a person's knowledge of food safety, risk perceptions of the food-borne pathogens, awareness of alternative risk reduction technologies (*e.g.*, HACCP, irradiation, safe food handling labels, home preparation practices), and socio-demographics. The survey will ask subjects to reveal their ordinal preferences for food safety and risk reduction technologies. Section 2 will ask consumers to report all foods eaten in the past 24 hours. Section 3 will provide the individual with a scientifically neutral description of the food-borne pathogens and the alternative risk reduction technologies. Then the individual will be asked to reveal his or her updated risk perceptions and his or her ordinal preferences for the alternative risk reduction technologies. Respondents will complete sections 2 and 3 once a week over a period of four weeks. During each round, they will be presented with information about the risks of infection from a different pathogen from a different food, which may then influence changes in food intake during the following round. The observed changes will be used to derive the ex ante willingness to pay for food safety improvements.

The results of both surveys will provide information on the sensitivity of willingness to pay to alternative information about risk levels, severity of illness, and duration as well as alternative risk reduction technologies. Those estimates can be used in comparing the benefits and costs of specific policies and regulations to improve food safety. In addition, the study will provide improved methods for estimating values of reductions in risk, which can be used to estimate the values of other reductions in risk.

Estimate of Burden: The reporting burden on each respondent completing the Part A survey is estimated to be 30 minutes, based on a trial administered to several test subjects. The burden to each respondent completing Part B is estimated to be 30 minutes per week for four weeks, or 2 hours total per respondent.

Respondents: The panel completing Part A is composed of consumers who have already been recruited by a private market research firm to participate in several surveys through the Internet. Household members primarily responsible for food shopping and preparation compose the panel for Part B.

Estimated Number of Respondents: The study design for Part A calls for each respondent to be presented with information about each food, including one of two possible risk of illness levels, and one of three possible levels of illness duration, severity, and mortality risk. A total of 800 respondents are needed for each level; the total number of respondents is then 800 times the largest number of levels for any variable, namely three. Thus, the total number of respondents needed is 2400.

The sample size for Part B is 500. The ability to investigate the heterogeneity of consumer risk preferences is greatly enhanced the more the sampling is repeated (repeating parts 2 and 3 with additional information about pathogens and risk reduction technologies), thus reducing pooling made necessary by the sample size. Initial exploration of the survey design suggested that four was about as many repeat samplings that most potential respondents would view as reasonable.

Estimated Total Burden on Respondents: 2200 hours [Part A—1200 hours (30 minutes per survey × 2400 respondents) plus Part B—1000 hours (500 respondents × 2 hours burden per respondent).

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address

stated in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Dated: March 4, 2002.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. 02–7631 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Long Damon Plantation Release and Site Preparation Project, Modoc County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, Modoc National Forest, Devil's Garden and Big Valley Ranger Districts will prepare an environmental impact statement (EIS) to disclose the environmental consequences of the proposed Long Damon Plantation Release and Site Preparation Project, and alternatives to the proposal. The decision to be made, is whether to select this proposed action or one of the alternatives to this proposal. The Long Damon Plantation Release and Site Preparation Project area is located approximately 18 miles northwest of Canby, CA, in Modoc County, CA, within the 23,400 acre Damon Wildfire that burned in 1996.

The Forest Service proposes to treat competing vegetation on up to 4,700 acres that have been, or will be, planted with native conifer seedlings. The proposal protects a large public investment in post-fire reforestation, accelerates development of the desired resource conditions described for this area in the Modoc National Forest Land and Resource Management Plan (MLRMP), as amended by the Sierra Nevada Forest Plan Amendment Record of Decision—Jan 2001 (SNROD), and implements Standards and Guidelines described by MLRMP as amended by SNROD. The areas where actions are proposed are identified as General Forest, Inventoried Roadless and Wildland Urban Interface areas in the SNROD. Vegetation treatments proposed in plantations within these land allocations are designed to accelerate development of old forest characteristics, increase the distribution and connectivity of forests across the landscape, increase stand heterogeneity, and reduce the risk of wildfire loss. Projects within Inventoried Roadless and Wildland Urban Interface land allocations are designed to move areas towards conditions that allow for efficient and safe suppression of wildland fire. The proposed action is also consistent with the objectives of the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976: It is the policy of the Congress that all forested lands in the National Forests shall be maintained in appropriate forest cover with species of trees, degrees of stocking, rate of growth and conditions of stand, designed to secure maximum benefits of multiple use sustained yield management in accordance with land management plans.

The Forest Service proposes to aerially apply Pronone 10G, a granular formulation of the herbicide hexazinone to control competing vegetation in post-fire plantations where successful seedling establishment is threatened. Aerial application by helicopter is the preferred method of treatment due to cost efficiency, speed and accuracy of application, and low worker exposure. The objective of this treatment is to reduce competing vegetation levels below twenty percent total ground cover for a period of two to three years after planting. Reforestation success is more readily achieved when competing vegetation is managed to produce a favorable environment for survival and growth of conifer seedlings. Control of the environment in these plantations is critical to ensure survival and growth of native conifer seedlings in sufficient quantity and quality to meet the long-term objective of increased distribution and connectivity of large trees across the landscape. Without adequate stocking of vigorously growing, well-distributed seedlings, these plantations will lack the resiliency over time to meet these long-term objectives.

Important preliminary considerations identified to date are: (1) Worker safety/public safety, including Native American plant uses and collections; (2) Direct and indirect effects to wildlife and (3) Effects to a Forest Service listed sensitive plant, Iliamna bakeri.

In addition to the proposed action and the no action alternative, other possible alternatives include no treatment in specific plantations or portions of plantations with high densities if Iliamna bakeri where these sub-populations could serve as a seed source for the surrounding area. The alternatives to this proposal will include a no-action alternative.

DATES: Comments identifying issues concerning the effects of the proposal should be postmarked on or before April 29, 2002 to receive timely consideration in the draft EIS.

ADDRESSES: Submit written comments to: Anne Mileck, Team Leader, USDA Forest Service, 800 West 12th St. Alturas, CA 96101. Send electronic comments to: *amileck@fs.fed.us.* Please reference the Long Damon Plantation Release and Site Preparation Project on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you. Comments received, including names and addresses of those who comment, will become part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality.

FOR FURTHER INFORMATION CONTACT: Anne Mileck, Team Leader, at 530–233–8803 or Bernie Weisgerber, District Ranger, Doublehead Ranger District, at 530–667–2246.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed land management activities. The information presented in this notice is summarized. Those who wish to provide comments, or are otherwise interested in the project, are encouraged to obtain additional information from the contact identified in the **FOR FURTHER INFORMATION CONTACT** section.

Public Involvement

Additional information concerning the proposal can be accessed on the Internet at *http://www.r5.fs.fed.us/modoc/management/nepa/nepa.html.*

Process Procedures and Timelines

The Long Damon Plantation Release and Site Preparation Project has been listed in the Modoc National Forest's Calendar of Proposed Environmental Actions since January 1999. Public scoping for an Environmental Assessment began in the fall of 1999. In January 2000 the Forest sent a scoping letter describing the proposed action to 39 government agencies, public individuals and groups, including private landowners adjacent to the proposed treatment areas and to others who had been identified as potentially interested in the proposed vegetation management program. Consultation with local Native American tribal

representatives started in January of 2000 and has been ongoing. The Forest has conducted three field trips to the project area for the public and local Native American tribal representatives.

All comments received from the earlier scoping period will be considered in the EIS, unless respondent submits new comments indicating changes to prior submissions.

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review by May 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519 553 (1978)). Also, environmental objection that could be raised at the draft environmental impact statement state but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F. 2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)).

Because of the above rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. After the comment period ends on the draft EIS, the comments received will be analyzed and considered by the Forest Service in preparing the final EIS.

The final EIS is scheduled to be completed in September, 2002. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision.

That decision will be subject to appeal under 36 CFR part 215.

The responsible official is Dan Chisholm, Forest Supervisor, Modoc National Forest, 800 W. 12th St., Alturas, CA 96101.

Dated: March 18, 2002.

Dan Chisholm,

Forest Supervisor.

[FR Doc. 02–7183 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Monday, April 8, 2002 at the Skamania County Public Works Department basement located in the Courthouse Annex, 170 N.W. Vancouver Avenue, Stevenson, Washington. The meeting will begin at 1 p.m. and continue until 4 p.m. The purpose of the meeting is to:

(1) Complete the recommendation for funding of Title II projects for fiscal year 2002 from the March 15 meeting.

(2) Provide for a Public Open Forum.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (2) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenberger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: March 25, 2002.

Lynn Burditt,

Deputy Forest Supervisor.

[FR Doc. 02–7575 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Idaho

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: It is the intention of the NRCS in Idaho to issue revised conservation practice standard: Agrichemical Mixing Facility (702), Alley Cropping (311), Composting Facility (317), Conservation Cover (327), Conservation Crop Rotation (328), Contour Farming (330), Contour Stripcropping (585), Cover Crop (340), Deep Tillage (324), Fish Passage (396), Grassed Waterway (412), Grazing Land Mechanical Treatment (548), Irrigation Water Conveyance, Ditch and Canal Lining Nonreinforced Concrete (428A), Irrigation Water Management (449), Land Smoothing (466), Nutrient Management (590), Pest Management (595), Pipeline (516), Prescribed Burning (338), Pumping Plant for Water Control (533), Residue Management, Mulch Till (329B), Riparian Forest Buffer (391), Spoil Spreading (572), Spring Development (574), Stream Habitat Improvement and Management (395), Surface Roughening (609), Underground Outlet (620), Use Exclusion (472), and Windbreak/Shelterbelt Establishment (380).

DATES: Comments will be received for a 30-day period commending with this date of publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Richard W. Sims, State Conservationist, Natural Resources Conservation Service (NRCS), 9173 W. Barnes Dr., Suite C, Boise, Idaho 83709. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. The next 30 days the NRCS in Idaho will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Idaho regarding disposition of those comments and a final determination of change will be made.

Dated: March 15, 2002.

Richard W. Sims,

State Conservationist, USDA, Natural Resources Conservation Service, Boise, Idaho 83709.

[FR Doc. 02–7555 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #386, Field Border and #380, Windbreak/Shelterbelt Establishment to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: March 18, 2002.

L. Willis Miller,

Assistant State Conservationist for Programs, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 02–7554 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

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

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: April 29, 2002.

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

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions:

On November 9 and November 23, 2001, January 11, February 1, February 8 and February 15, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (66 FR 56635 and 58712, 67 FR 1436, 4944, 5965 and 7130) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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

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

2. The action will not have a severe economic impact on current contractors for the products and services.

3. The action will result in authorizing small entities to furnish the products and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Labels, Laser/7530–00–NIB–0527.

Product/NSN: Labels, Laser/7530–00–NIB–0528.

Product/NSN: Labels, Laser/7530–00–NIB–0530.

Product/NSN: Labels, Laser/7530–00–NIB–0531.

Product/NSN: Labels, Laser/7530–00–NIB–0532.

Product/NSN: Labels, Laser/7530–00–NIB–0533.

Product/NSN: Labels, Laser/7530–00–NIB–0534.

Product/NSN: Labels, Laser/7530–00–NIB–0535.

Product/NSN: Labels, Laser/7530–00–NIB–0536.

Product/NSN: Labels, Laser/7530–00–NIB–0582.

Product/NSN: Labels, Laser/7530–00–NIB–0648.

Product/NSN: Labels, Laser/7530–00–NIB–0649.

NPA: North Central Sight Services, Inc., Williamsport, PA.

Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.

Services

Service Type/Location: Administrative Support Services/GSA PBS Atlanta PMC, Atlanta, GA.
NPA: Blind & Low Vision Services of North Georgia, Smyrna, GA.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Distribution of Licensed Products for the G.R.E.AT Department of the Treasury, Bureau of ATF, Washington, DC (25% of Total Government Requirement).
NPA: Industries for the Blind, Inc., Milwaukee, WI.
Contract Activity: Department of the Treasury, Bureau of ATF.
Service Type/Location: Eyewear Prescription Service/Department of Veterans Affairs Veteran Integrated Services Network 7, (Alabama, Georgia and South Carolina).
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contract Activity: Department of Veterans Affairs.
Service Type/Location: Janitorial/Custodial/Defense Commissary Agency Western Pacific Region, McClellan, CA.
NPA: PRIDE Industries, Roseville, CA.
Contract Activity: Defense Commissary Agency, Fort Lee, VA.
Service Type/Location: Janitorial/Custodial/Naval and Marine Corps Reserve Center, Boise, ID.
NPA: Western Idaho Training Company, Inc., Caldwell, ID.
Contract Activity: Naval Facilities Engineering Command—Everett, Everett, WA.
Service Type/Location: Janitorial/Custodial/Naval and Marine Corps Reserve Center, Eugene, OR.
NPA: Pearl Buck Center Incorporated, Eugene, OR.
Contract Activity: Naval Facilities Engineering Command—Everett, Everett, WA.
Service Type/Location: Janitorial/Custodial/Veterans Affairs Outpatient Clinic, Greenville, SC.
NPA: Greenville Rehabilitation Center, Greenville, SC.
Contract Activity: Department of Veterans Affairs.
Service Type/Location: Janitorial/Custodial/Border Patrol Air Operations Facility, (Marfa Airport), Marfa, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Anti-Smuggling Unit Office, Marfa, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Alpine, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Fort Stockton, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Marfa, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Pecos, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Presidio, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Sanderson, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Sierra Blanca, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Van Horn, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Traffic Checkpoint, Alpine, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Traffic Checkpoint, Marathon, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Traffic Checkpoint, Marfa, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Traffic Checkpoint, Sierra Blanca, TX.
NPA: Professional Contract Services, Inc., Austin, TX.
Contract Activity: Immigration and Naturalization Service, DOJ.
Service Type/Location: Mailroom Operation/Internal Revenue Service-US Mint Headquarters, Washington, DC.
NPA: ServiceSource, Inc., Alexandria, VA.
Contract Activity: Internal Revenue Services.
Service Type/Location: Maintenance and Repair of Portable Light Towers/Basewide, Fort Hood, TX.
NPA: Professional Contract Services, Inc., Austin, TX.
Contract Activity: Army III Corps and Ft. Hood Contracting CMD, Ft. Hood, TX.

Deletions

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

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the products.

3. The action may result in authorizing small entities to furnish the products to Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46048 and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Squeegee, Floor-Cleaning/7920–00–224–8339.
Product/NSN: Squeegee, Floor-Cleaning/7920–00–530–5740.
Product/NSN: Squeegee, Floor-Cleaning/7920–00–965–4873.
NPA: There is currently no nonprofit agency authorized to provide these products.
Contract Activity: GSA, General Products Commodity Center, Fort Worth, TX.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 02–7640 Filed 3–28–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

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

ACTION: Proposed additions to Procurement List.

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

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 29, 2002.

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

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

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

If the Committee approves the proposed additions, the entities of the

Federal Government identified in the notice for each product or service will be required to procure the products and 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 products and services to the Government.

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

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the products and 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 products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0060.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on/6530–00–NIB–0061.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00–NIB–0062.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00–NIB–0063.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00–NIB–0064.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00–NIB–0065.
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0066.
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0067.
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0068.
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0069.
NPA: Lighthouse for the Blind, St. Louis, MO.
Contract Activity: Department of Veterans Affairs Acquisition Center, Hines, IL.
Product/NSN: Floor Stripper LO/7930–00–NIB–0124.
Product/NSN: 3–1 Floor Cleaner/7930–00–NIB–0216.
Product/NSN: Quat Disinfectant Cleaner/7930–00–NIB–0267.
Product/NSN: Heavy Duty Aircraft Cleaner/7930–01–381–5794.
Product/NSN: Bathroom Cleaner/7930–01–381–5820.
Product/NSN: Glass Cleaner/7930–01–381–5826.
Product/NSN: General Purpose Cleaner/7930–01–381–5834.
Product/NSN: Neutral Cleaner/7930–01–381–5897.
Product/NSN: Food Service Degreaser/7930–01–381–5936.
Product/NSN: Heavy Duty Multi Surface Cleaner/7930–01–381–5997.
Product/NSN: Fresh Scent Deodorizer/7930–01–412–1033.
Product/NSN: Mountain Space Deodorizer/7930–01–412–1034.
Product/NSN: Sanitizer Cleaner/7930–01–412–1036.
Product/NSN: Phenolic Disinfectant/7930–01–436–7950.
Product/NSN: Non Acid Bathroom Cleaner/7930–01–436–8083.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.
Product/NSN: Kit, Employee Start, Up/7520–01–493–6006.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.
Product/NSN: Sunscreen Preparation, Gel or Lotion/6505–01–121–2336.
NPA: ACT CORP., Daytona Beach, FL.
Contract Activity: Defense Supply Center—Philadelphia, Philadelphia, PA.

Services

Service Type/Location: Grounds Maintenance/NASA Goddard Space Flight Center, Greenbelt, MD.
NPA: Melwood Horticultural Training Center, Upper Marlboro, MD.
Contract Activity: NASA—Goddard Space Flight Center.
Service Type/Location: Janitorial/Grounds and Related Services/Federal Building, Tucson, AZ.
Service Type/Location: Janitorial/Grounds and Related Services/Motor Pool Office and Garage, Tucson, AZ.
Service Type/Location: Janitorial/Grounds and Related Services/US Border Patrol Sector HQ, Tucson, AZ.
NPA: Tetra Corporation, Tucson, AZ.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Switchboard Operation/Veterans Affairs Medical Center, Iowa City, IA.
NPA: Goodwill Industries of Southeast Iowa, Iowa City, IA.
Contract Activity: Veterans Affairs Medical Center, Iowa City, IA.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 02–7641 Filed 3–28–02; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on April 16, 2002, at the Adam's Mark, 64 S. Water Street, Mobile, Alabama 36602. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 25, 2002.

Ivy L. Davis,
Chief, Regional Programs Coordination Unit.

[FR Doc. 02–7548 Filed 3–28–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on April 25, 2002, at the South Carolina Human Affairs Commission, 2611 Forest Drive, Suite

200, Columbia, South Carolina 29240. The purpose of the meeting is to conduct new member orientation, to hear from the chairperson of the South Carolina Black Legislative Caucus and other speakers regarding Title VI, the United States Housing and Urban Development's Hope VI Project and other civil rights enforcement efforts in South Carolina.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–7550 Filed 3–28–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the Washington Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on April 24, 2002, at the Westin Seattle, 1900 Fifth Avenue, Seattle, Washington 98101. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–7549 Filed 3–28–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Field Representative Exit Questionnaire.

Form Number(s): BC–1294, BC–1294(D).

Agency Approval Number: 0607–0404.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 59 hours.

Number of Respondents: 500.

Avg Hours Per Response: BC–1294–7 minutes; BC–1294(D)–10 minutes.

Needs and Uses: Field interviewers are the foundation of Census Bureau data collection programs. Retention of trained field interviewing staff is a major concern for the Census Bureau because of both the monetary costs associated with employee turnover, as well as the potential impact on data quality. High turnover among interviewers can result in a reduction in the quality of data collected as well as increases in the cost of collecting data. In a continuous effort to devise policies and practices aimed at reducing turnover among interviewers, the Census Bureau collects data on the reasons interviewers leave the Census Bureau. The exit questionnaires (Forms BC–1294 and BC–1294(D)) are used to collect data from a sample of former current survey interviewers (field representatives) and decennial census interviewers (enumerators).

The purpose of the exit questionnaires is to determine the reasons for interviewer turnover and what the Census Bureau might have done or can do to influence them not to leave. As the demographics of our labor force, the nature of the surveys conducted, and the environment in which surveys take place continue to change, it is important that we continue to examine the interviewers' concerns. Information provided by respondents to the exit questionnaire provides insight on the measures the Census Bureau might take to decrease turnover and is useful in helping to determine if the reasons for interviewer turnover appear to be systemic or localized. The exit questionnaires seek reasons interviewers quit, inquires about motivational factors that would have kept the interviewers from leaving, identify training program strengths and weaknesses as they impact on the decision to quit, identify supervisory style strengths and weaknesses as they impact on the decision to leave, and identify the impact of pay and other working conditions on the interviewer's decision to leave the job. The exit questionnaires have been shown to be useful and we want to continue their use.

Both exit questionnaires have been revised since the last request for clearance to improve clarity in the wording of some questions. Some answer categories that are no longer germane have been deleted or replaced. Some questions have been removed. Changes to the exit questionnaires were made based on lessons learned and feedback on the current forms.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: 5 U.S.C. 3101; 13 U.S.C., 23.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 26, 2002.

Madeleine Clayton,

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

[FR Doc. 02–7543 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Institutional Remittances to Foreign Countries—BE–40

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 proposed and/or continuing information collections; as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 28, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Michael Mann, Chief, Current Account Services Branch, Room 8018, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9573; and fax: (202) 606–5314.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Economic Analysis is responsible for the computation and publication of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the ''private remittances'' portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business,* are one of the major statistical products of BEA. The accounts provide a statistic summary of U.S. international transactions. They are used by government and private organizations for national and international policy formulation, and analytical studies. Without the information collected in this survey, an integral component of the private remittances account would be omitted. No other Government agency collects comprehensive annual data on private unilateral transfers of funds to foreign countries.

The survey requests information from U.S. religious, charitable, educational, scientific, and similar organizations on the transfer of cash grants to foreign countries and their expenditures in foreign countries. Information is collected on a quarterly basis from institutions transferring $1 million or more each year, and annually for all others. Nonprofit organizations with total remittance of less than $25,000 annually are exempt from reporting.

II. Method of Collection

Information is obtained from U.S. religious, charitable, educational, scientific, and similar organizations who voluntarily agree to provide data regarding transfers of cash grants to foreign countries and their expenditures in foreign countries. Submission of the completed report form, or computer printouts in the format of the report form, are the most expedient and economical methods of reporting the information. In accordance with the Paperwork Reduction Act of 1995, BEA is implementing the ASTAR system which allows organizations to file electronically via the Internet.

III. Data

OMB Number: 0608–0002.

Form Number: BE–40.

Type of Review: Renewal—regular submission.

Affected Public: U.S. religious, charitable, educational, scientific, and similar organizations which transfer cash grants to foreign countries and their expenditures in foreign countries.

Estimated Number of Respondents: 1,336.

Estimated Time Per Response: 1.5 hours per annual reporter. 6.0 hours per quarterly reporter.

Estimated Total Annual Burden Hours: 3,273 hours.

Estimated Total Annual Cost: The estimated annual cost to the government is $17,600. The estimated annual cost to the public is $98,190 based on total number of hours estimated as the reporting burden and as estimated hourly cost of $30.

Respondent's Obligation: Voluntary.

Legal Authority: Bretton Woods Agreement Act, Section 8, and E.O. 10033, as amended.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or 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 the information collection; they also will become a matter of public record.

Dated: March 26, 2002.

Madeleine Clayton,

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

[FR Doc. 02–7542 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Bulk Aspirin from the People's Republic of China; Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review.

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

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China (''PRC''). The period of review is July 6, 2000 through June 30, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

DATES: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Cole Kyle in Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; at telephone (202) 482–4207 and 482–1503, respectively.≤

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act and all citations to the regulations are to 19 CFR Part 351 (2001).

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day

of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On August 20, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on bulk aspirin from the PRC, covering the period July 6, 2000 through June 30, 2001 (66 FR 43570). The preliminary results for the antidumping duty administrative review of bulk aspirin from the PRC are currently due no later than April 2, 2002.

Extension of Time Limits for Preliminary Results

In order to consider various issues (e.g., factor values, changed circumstances review request) raised by the interested parties in this review, it is not practicable to complete this review within the originally anticipated time limit (i.e., by April 2, 2002). Therefore, the Department of Commerce is extending the time limit for completion of the preliminary results to no later than July 31, 2002, in accordance with section 751(a)(3)(A) of the Act.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 25, 2002

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 02–7654 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils From Germany: Amended Final Determination of Antidumping Duty Investigation

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

ACTION: Notice of Amended Final Determination of Antidumping Duty Investigation.

EFFECTIVE DATE: December 28, 2001.

SUMMARY: On July 27, 1999, the Department of Commerce (the Department) published an amended final determination of its antidumping duty investigation of stainless steel sheet and strip in coils from Germany. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 40557 (July 27, 1999). Parties to the proceedings subsequently challenged certain aspects of our final determination before the United States Court of International Trade (the Court). This litigation resulted in two remand orders by the Court, to which the Department timely responded.

On October 19, 2001, the Court affirmed the redetermination made by the Department pursuant to the Court's second remand of the final determination of sales at less than fair value of stainless steel sheet and strip in coils from Germany. See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States, Court No. 99–08–0050, Slip Op. 01–123 (CIT October 19, 2001). As there is now a final and conclusive court decision with respect to litigation for Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States, Court No. 99–08–0050, we are hereby amending our final determination of sales at less than fair value and will instruct U.S. Customs of the resultant changes in the relevant cash deposit instructions.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James at (202) 482–1121, or (202) 482–0649, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Below is a summary of the litigation for the April 1, 1997 through March 31, 1998 final determination for which the Court has issued final and conclusive decisions.

On July 27, 1999, the Department published in the *Federal Register* a notice of amended final determination of sales at less than fair value and antidumping duty order on stainless steel sheet and strip in coils from Germany. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 40557 (July 27, 1999) (*Amended Final Determination*).

Following publication of the amended final determination, Krupp Thyssen Nirosta GmbH (KTN) and Krupp Hoesch Steel Products, Inc. (KHSP) filed a lawsuit with the Court challenging certain aspects of the Department's findings in the antidumping investigation of stainless steel sheet and strip in coils from Germany.

On July 31, 2000, the Court remanded eight issues from the *Amended Final Determination*, ordering the Department to either alter its approach or to provide additional explanation or adduce substantial evidence that its original approach was in accordance with law and otherwise supported by substantial evidence. *See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States*, Court No. 99–08–0050, Slip Op. 00–89 (CIT 2000) (Krupp I).

On October 30, 2000 the Department issued its *Results of Redetermination Pursuant to Court Remand Stainless Steel Sheet and Strip in Coils from Germany* (*Remand Determination I*) addressing the concerns of the Court as stated in *Krupp I*.

On July 9, 2001 the Court issued a second order remanding the Department's *Remand Determination I*. In *Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States*, Court No. 99–08–0050, Slip Op. 01–84 (CIT 2001) (*Krupp II*), the Court sustained our first redetermination as to facts available for certain downstream sales, our rejection of an affiliated U.S. reseller's database, and our application of facts available with respect to allocating sales of unidentified origin. *See Krupp II*. However, the Court directed the Department: i) to use facts available for the purpose of calculating U.S. Reseller's margin rate and any other calculation predicated on U.S. Reseller's cost and sales data; and, ii) to calculate facts available for the reseller in a way that uses sales prices net of movement and selling expenses.

On September 7, 2001 the Department issued its Draft Results of Redetermination to the plaintiffs and defendant-intervenors to comment. Neither party submitted comments on the Department's Draft Results of Redetermination. Pursuant to *Krupp II* the Department filed its redetermination on remand on September 14, 2001. The Department's Results of Redetermination were identical to the Draft Results of Redetermination.

On October 19, 2001, the Court affirmed the Department's remand

determination. *See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States*, Court No. 99–08–0050, Slip Op. 01–123 (CIT October 19, 2001). The period to appeal has expired and no appeal was filed. Therefore, there is now a final and conclusive court decision with respect to the final determination of sales at less than fair value, and we are amending our final determination of the antidumping duty investigation for KTN based on our recalculation of KTN's rates pursuant to the remand. The amended final determination margin for KTN is 13.48 percent. As a result of these changes, the ''All Others'' rate also changes to 13.48 percent. We will instruct the U.S. Customs to change the relevant cash deposit instructions, effective December 28, 2001.[1]

Amendment to Final Determination

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), we are now amending the final determination of the sales at less than fair value investigation. The amended weighted-average margins are:

Exporter/ Manufacturer	Weighted-Average Margin (percent)
Krupp Thyssen Nirosta GmbH	13.48
All Others	13.48

We will instruct U.S. Customs to change the existing ''All Others'' cash deposit requirements accordingly, effective December 28, 2001. We note that KTN's current cash deposit rate is based upon an administrative review conducted subsequent to this segment of the proceeding. Therefore, this amended final determination does not affect the cash deposit rate for KTN.

Dated: March 20, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–7653 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] On February 20, 2002, the Department published the final results of the 1999 - 2000 administrative review of this order, establishing a new cash deposit rate of 2.61 percent for KTN. As a result, our cash deposit instructions for this amended final will serve only to correct the ''All Others'' rate.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121200A]

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Donation Program

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

ACTION: Announcement of approval of data collection.

SUMMARY: NMFS is announcing the approval of an information collection requirement for the Prohibited Species Donation Program.

DATES: Effective March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: The information collection requirement for § 679.26, including a revision to paragraph 679.26(c)(3) which was contained in the final rule to amend regulations implementing recordkeeping and reporting requirements for the groundfish fisheries of the exclusive economic zone off Alaska (67 FR 4100, January 28, 2002), was approved by the Office of Management and Budget (OMB) on March 11, 2002, in the renewal of OMB control number 0648–0316.

Dated: March 22, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–7709 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its new Volunteer Service Hour Tracking Tool. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by May 28, 2002.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. Christine Benero, Director, Public Affairs and Public Liaison, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Christine Benero, (202) 606–5000, ext. 193, or at *CBenero@cns.gov.*

SUPPLEMENTARY INFORMATION:

Record of Service

I. Background

In his State of the Union address, President Bush called on all Americans to perform some form of service to the nation for the equivalent of two years of his or her life. Americans serve their country in extraordinary and countless ways. Most of our Nation 's civic work is being done without the aid of the Federal Government, but we believe the Federal Government can work to enhance the opportunities for Americans to serve their neighbors and their Nation. The Administration proposes to create and expand activities that will enhance homeland security, provide additional community-based service and volunteer opportunities, and assist people around the world. In January, the President announced the creation of the USA Freedom Corps which will have three major components: a newly created Citizen Corps to engage citizens in homeland security; an improved and enhanced AmeriCorps and Senior Corps, programs of the Corporation for National and Community Service (Corporation); and a strengthened Peace Corps.

In support of the President's call to service, the Corporation has created an electronic record of service that provides citizens who accept his challenge a way to track their service time and record their service hours Use of this tracking tool is 100 percent electronic in that users will establish a user ID and password that automatically creates a ''record of service'' account which is only accessible to that particular user. This record of service account can be updated only by the user who established the account. In addition, those users who create a record of service account can, by checking various blocks, elect to receive information about USA Freedom Corps and other national and community service volunteer activities.

II. Current Action

Because of President Bush's announcement on March 12, 2002, which informed the public of the availability of this record of service, the Corporation, on March 6, 2002, submitted a request for emergency processing and approval by OMB of this record of service because it could not reasonably comply with the normal clearance procedures under the Paperwork Reduction Act. OMB approved this request on March 12, 2002, for a period of six months to expire on September 30, 2002, and assigned Control Number 3045–0077 to this information collection activity. The link to this record of service, which is now available for use, and which serves as a means for the public to record their record of service may be found on the following Internet address: *http://www.usafreedomcorps.gov.*

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Volunteer Service Hour Tracking Tool.

OMB Number: 3045–0077.

Agency Number: None.

Affected Public: Citizens of the United States.

Total Respondents: 10,000.

Frequency: On occasion.

Average Time Per Response: 3 minutes.

Estimated Total Burden Hours: 500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 22, 2002.

Christine Benero,

Director, Public Affairs and Public Liaison.

[FR Doc. 02–7443 Filed 3–28–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–14]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPAT/RM. (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–14 with attached transmittal and policy justification.

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 MAR 2002
In reply refer to:
I-02/000978

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-14 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Spain for defense articles and services estimated to cost $19 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments
Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-14

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Spain

(ii) **Total Estimated Value**:

Major Defense Equipment*	$15 million
Other	$ 4 million
TOTAL	$19 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: Thirty-one AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), eight Captive Air Training Missiles, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, publications and technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support

(iv) **Military Department**: Air Force (YDI)

(v) **Prior Related Cases, if any**: FMS case YAF - $45 million - 5Mar99

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex under separate cover

(viii) **Date Report Delivered to Congress**: 20 MAR 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Spain - AIM-120C Advanced Medium Range Air-to-Air Missiles

The Government of Spain has requested a possible sale of 31 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), eight Captive Air Training Missiles, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, publications and technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support. The estimated cost is $19 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Spain while enhancing weapon system standardization and interoperability with U.S. forces.

Spain needs these additional missiles to enhance the air-to-air self-defense capability of their F-18 aircraft and provide for increased interoperability with U.S. forces. Spain will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–7639 Filed 3–28–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to alter system of records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration consists of adding a new category of individuals covered by the system of records, i.e., NIMA personnel who are claiming reimbursement of their real estate expenses for either the sale or purchase of their residence associated with a permanent change of station.

DATES: This proposed action will be effective without further notice on april 29, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Avenue, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Ms. Christine May on (301) 227–4142.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 20, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

B0402–05; {tc /11 "B0402–05}

SYSTEM NAME:

Legal Claims File (July 13, 1995, 60 FR 36124).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "NIMA personnel and other individuals having a claim against the Government for loss, damage, or destruction of personal property or for "NIMA personnel who are claiming reimbursement of their real estate expenses for either the sale or purchase of their residence associated with a permanent change of station (PCS). Any individual filing a tort claim against NIMA for damages, loss or destruction of property, personal injury or death resulting from negligence or

wrongful act, or omission of acts by NIMA personnel and individuals against whom the Agency has legal claim.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 28 U.S.C. 2671–2680, Federal Torts Claims Act and II JTR, Chapter 14 (Joint Travel Regulations)''.

PURPOSE(S):

Delete entry and replace with ''To document claims against the U.S. Government, involving NIMA personnel or property, for damage, loss, or destruction of personal property. To document claims of NIMA employees concerning real estate reimbursement claims adjudicated by the Office of the General Counsel.''

* * * * *

STORAGE:

Add to entry ''and electronic records are maintained on computer server accessible only by authorized user name and password.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a secured/locked file cabinets with access limited to authorized personnel whose duties require access. Automated files are protected by user name and password and are stored in a database that requires additional access permissions''.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Related forms, correspondence, investigative reports and information gathered in anticipation of litigation, and opinions of Counsel and the NIMA individual's claim form and accompanying documents and records from the NIMA Travel Office.''

* * * * *

B0402–05; {**tc** **11 ''B0402–05**}

SYSTEM NAME:

Legal Claims File.

SYSTEM LOCATION:

Primary System—Office of the General Counsel, National Imagery and Mapping Agency, Mail Stop L–32, 3200 S. Second Street, St. Louis, MO 63118–3399.

Decentralized Segments—Staff Judge Advocate, ATTN: ATZT–JA–CO, 125 East 8th Street, Fort Leonard Wood, MO 65473–8942.

Military District of Washington, ATTN: PAWJA–LA, 204 Lee Avenue, Fort Myer, VA 22211–1199.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIMA personnel and other individuals having a claim against the Government for loss, damage, or destruction of personal property or for NIMA personnel who are claiming reimbursement of their real estate expenses for either the sale or purchase of their residence associated with a permanent change of station (PCS). Any individual filing a tort claim against NIMA for damages, loss or destruction of property, personal injury or death resulting from negligence or wrongful act, or omission of acts by NIMA personnel and individuals against whom the Agency has legal claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's claims, related correspondence and processing papers, investigative reports, recommendations and opinions of the General Counsel's Office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 28 U.S.C. 2671–2680, Federal Torts Claims Act and II JTR, Chapter 14 (Joint Travel Regulations).

PURPOSE(S):

To document claims against the U.S. Government, involving NIMA personnel or property, for damage, loss, or destruction of personal property. To document claims of NIMA employees concerning real estate reimbursement claims adjudicated by the Office of the General Counsel.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper record in file folders and electronic records are maintained on computer server accessible only by authorized user name and password.

RETRIEVABILITY:

Filed alphabetically by last name of employee or by case name.

SAFEGUARDS:

Records are maintained in a secured/locked file cabinets with access limited to authorized personnel whose duties require access. Automated files are protected by user name and password and are stored in a database that requires additional access permissions

RETENTION AND DISPOSAL:

Disapproved claims and claims involving a minor are destroyed 10 years after final action on the case. Approved claims are destroyed 5 years after final action on the case. PCS records that are reviewed by the Office of General Counsel are retained for 5 years and disposed of after 5 years by shredding. No records are transferred to the records center.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, ST L–32, National Imagery and Mapping Agency, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves contained in this system should address written inquiries to National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail Stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail Stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number, and Social Security Number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Related forms, correspondence, investigative reports and information gathered in anticipation of litigation, and opinions of Counsel and the NIMA individual's claim form and

accompanying documents and records from the NIMA Travel Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–7541 Filed 3–28–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration will expand the category of individuals covered.

DATES: This proposed action will be effective without further notice on April 29, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 19, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records (August 7, 1997, 62 FR 42528).

A0040–5 DASG

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Active duty army, their family members, U.S. Army Reserve, National Guard on active duty or in drill status, U.S. Military Academy and Reserve Officer Training Corps cadets, when engaged in directed training, foreign national military assigned to Army components, Department of the Army civilian and non-appropriated fund personnel employed by the Army for whom specific occupational health examinations have been conducted and/or requested.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number, date and place of birth, marital status, dates of medical surveillance tests and their results; documents reflecting the training, experience and certification to work within hazardous environments; including personnel monitoring results and work are monitoring readings. Exposures to chemicals, radiation, physical environment, non-human primates, and similar and related documents; personnel protective equipment and medical programs required to limit exposure to environmental safety and health hazards are also included.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''To maintain a permanent record of work places, training, exposures, medial surveillance, and any medical care provided for eligible individuals.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are maintained by employing office until employee is separated at which time records are filed with the individual personnel record for 30 years. GB agent records maintain for 40 years then destroy.''

* * * * *

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records.

SYSTEM LOCATION:

U.S. Army Medical Command, 1216 Stanley Road, Suite 25m Fort Sam Houston, TX 78234–5053.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty army, their family members, U.S. Army Reserve, National Guard on active duty or in drill status, U.S. Military Academy and Reserve Officer Training Corps cadets, when engaged in directed training, foreign national military assigned to Army components, Department of the Army civilian and non-appropriated fund personnel employed by the Army for whom specific occupational health examinations have been conducted and/or requested.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date and place of birth, marital status, dates of medical surveillance tests and their results; documents reflecting the training, experience and certification to work within hazardous environments; including personnel monitoring results and work are monitoring readings. Exposures to chemicals, radiation, physical environment, non-human primates, and similar and related documents; personnel protective equipment and medical programs required to limit exposure to environmental safety and health hazards are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; 29 U.S.C. 668, Programs of Federal Agencies; 29 CFR 1910, Occupational Safety and Health Standards; Army Regulation 40–5, Preventive Medicine; E.O. 12223, Occupational Safety Health Programs for Federal Employees; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a permanent record of work places, training, exposures, medial surveillance, and any medical care provided for eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to appropriate Government agencies whose responsibility falls within the occupational health statutes identified under 'Authority'' above.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, printouts, magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate an official need to know. Information in automated media are further protected from unauthorized access in locked rooms. All individuals afforded access are given periodic orientations concerning sensitivity of personal information and requirement to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are maintained by employing office until employee is separated at which time records are filed with the individual personnel record for 30 years. GB agent records maintain for 40 years then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial determination are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Army Medical records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–7540 Filed 3–28–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be reviewing the fiscal plan for next year, the University's Distance Learning program, receiving the annual ethics briefing, and reviewing the University's curriculum mapping initiative. All sessions of the meeting will be open to the public.

DATES: The meetings will be held on Tuesday, April 30, 2002, from 9 a.m. to 4 p.m. and on Wednesday, May 1, 2002, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Marine Corps University General Alfred M. Gray Research Center, Rooms 165–166, 2040 Broadway Street, Quantico, VA 22134.

FOR FURTHER INFORMATION CONTACT: Garry Smith, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, VA 22134, telephone number (703) 784–4037.

Dated: March 8, 2002.

T.J. Welsh,

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

[FR Doc. 02–7559 Filed 3–28–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 28, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate

of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 25, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Teacher Recruitment Application Package.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 125.

Burden Hours: 20,000.

Abstract: This application package is essential for States and partnerships to apply for new awards under the Teacher Quality Enhancement Grants Program's Fiscal Year 2002 Teacher Recruitment competition.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–7573 Filed 3–28–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 28, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 25, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Revision.

Title: Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note.

Frequency: On occasion, annually.

Affected Public: Individuals or household; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,887,200.

Burden Hours: 2,165,400.

Abstract: This promissory note is the means by which a Federal Stafford Program Loan borrower promises to repay his or her loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO__IMG__Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via her Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–7574 Filed 3–28–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 47.076]

Mathematics and Science Partnerships

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002 under a grants competition to be administered by the National Science Foundation in collaboration with the Department.

Purpose of Program: The Mathematics and Science Partnerships (MSP) is intended to improve the academic achievement of students in mathematics and science through partnerships of organizations providing education from pre-kindergarten through postsecondary schooling. The MSP is a jointly funded initiative supported by the National Science Foundation (NSF) and the Department.

Note: The Department and NSF are cooperating to implement a single grants competition that NSF is administering. For FY 2002 NSF has committed $160 million, and the Department $12.5 million, to support the MSP. This notice describes the statutory requirements for Department funding under the MSP, and informs interested applicants how to apply for these funds.

Eligible Applicants: To receive the Department's MSP funding, a partnership must comprise, at minimum, a State educational agency (SEA), a mathematics, science, or engineering department of an institution of higher education (IHE), and a high-need local educational agency (LEA). The lead applicant may be any one of these entities. The term ''high-need LEA'' is defined in the ''Requirements for FY 2002 Competition'' section of this notice.

Deadline for Transmittal of Applications: April 30, 2002.

Deadline for Intergovernmental Review: July 1, 2002.

Estimated Available Funds: $12,500,000.

Estimated Range of Awards: $100,000–$1,500,000 per year for up to 5 years.

Estimated Average Size: $700,000 per year.

Estimated Number of Awards: 10–20.

Note: The Department is not bound by any estimates in this notice. Future-year funding depends on the availability of appropriations.

Project Period: Up to 60 months.

SUPPLEMENTARY INFORMATION: The President's plan for improving American education, the No Child Left Behind initiative, is embedded in the major revisions to the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110). The President's plan includes the MSP, an initiative to improve student achievement in mathematics and science. The MSP builds on the Nation's dedication to educational reform through—

- Support of partnerships that unite the efforts of local school districts with science, mathematics, engineering, and education faculties of colleges and universities and other individuals and entities with an interest in improving student achievement in mathematics and science; and
- High expectations and achievement for all students.

The MSP Program is newly authorized in title II, part B of the Elementary and Secondary Education Act (ESEA). Together, the funds committed by NSF and the funds that the Congress appropriated to the Department for the MSP will support projects to raise student achievement in these core subject areas by giving teachers greater knowledge, understanding, and appreciation of the mathematics and science they teach.

As section 2201 of the ESEA explains, the program would specifically meet this broad objective by encouraging SEAs, IHEs, high-need LEAs, and schools to participate in programs that—

1. Improve and upgrade the status and stature of mathematics and science teaching by encouraging IHEs to assume greater responsibility for improving mathematics and science teacher education;
2. Focus on the education of mathematics and science teachers as a career-long process;
3. Bring mathematics and science teachers together with scientists, mathematicians, and engineers to improve the teachers' content knowledge and teaching skills; and
4. Develop more rigorous mathematics and science curricula that are aligned both with challenging State and local academic achievement standards, and the standards expected for postsecondary study in engineering, mathematics, and science.

The complete text of title II, part B is available on the Internet at: *www.ed.gov/legislation/ESEA02/pg26.html*.

The Department and NSF are collaborating to implement the MSP in ways that will maximize services and technical assistance to grantees by eliminating duplicative efforts of the two agencies and, at the same time, building on the strengths of each agency. There will be a single grant competition this year administered by NSF with the collaboration of the Department. A single set of reviewers will review all applications. After they have recommended those applications that they believe are of highest quality, the Department will make awards with Title II, part B funds to those that meet the special criteria contained in the statute.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, to make timely grant awards in FY 2002, the Secretary has decided to issue these final requirements without first publishing them as proposals for public comment. These requirements will apply to the FY 2002 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

At a later date the Assistant Secretary plans to publish a notice of proposed requirements for this program and offer interested parties the opportunity to comment. The proposed requirements would apply to grant competitions under the program beginning in FY 2003.

The remainder of this notice explains the application content, selection criteria, and other information that prospective applicants will need to know to qualify for MSP grants that the Department will competitively award under title II, part B.

Requirements for FY 2002 Competition

NSF published a grant solicitation for the MSP on January 31, 2002 (announcement NSF–02–061). This solicitation gives applicants until April 30, 2002, to submit their applications, provides other rules that govern the content and formatting of these applications, and announces the selection criteria that NSF will use to assess the relative merit of each application.

All of the rules, deadlines, and selection criteria in the NSF announcement also apply to those wishing to receive MSP grants from the Department. Therefore, applicants that want to be considered for Department funding must respond to these selection criteria and application requirements, and adhere to the instructions for preparing applications contained in this NSF solicitation.

A copy of the NSF grant solicitation may be obtained on the NSF web site at: *www.ehr.nsf.gov*.

For general and continually updated information, applicants should consult the following web site: *www.nsf.gov*.

Invitational priorities. The Secretary is particularly interested in having applicants submit to NSF proposals that address one or more of the following strategies:

1. Engaging classroom teachers in mathematical or scientific research and development projects sponsored by IHEs or other private- and public-sector research organizations.
2. Engaging practicing teachers as professional colleagues who work together with scientists, mathematicians and engineers to master advanced, new content and teaching strategies.
3. Demonstrating how technology can be used in the classroom both to deepen teachers' scientific and mathematical understanding and to promote higher student achievement.
4. Establishing and evaluating the effectiveness of differential salary scales used to make the mathematics and science teaching profession more comparable in pay to the private sector. These differential salary scales would be both a tool to attract beginning teachers with deep mathematical or scientific training, and a means to create a career ladder capable of retaining highly skilled and effective teachers.

Other pre-award requirements. Consistent with section 2202 of the ESEA, before making any grant awards the Department must have the following additional information from applicants it has selected for funding:

1. The results of a comprehensive assessment of the teacher quality and professional development needs of any schools, LEAs, and SEAs that comprise the eligible partnership with respect to the teaching and learning of mathematics and science.

2. A description of how the activities to be carried out by the eligible partnership will be aligned with (a) challenging State academic content and student academic achievement standards in mathematics and science, and (b) other educational reform activities that promote student academic achievement in mathematics and science.

3. A description of how the activities to be carried out by the eligible partnership will be based on a review of scientifically based research, and an explanation of how the activities are expected to improve student academic achievement and strengthen the quality of mathematics and science instruction.

4. A description of (a) how the eligible partnership will carry out the activities described in this notice under ''Authorized Activities'', and (b) the eligible partnership's plan for evaluation and accountability as described in section 2202(c) of the ESEA.

5. A description of how the eligible partnership will continue the activities funded by this program after the original grant has expired.

Eligible partnerships. To be eligible to receive an MSP grant from the Department, a partnership must include a high-need LEA. Section 2102(3) of the ESEA defines ''high-need LEA'' to mean an LEA—

1. (a) That serves not fewer than 10,000 children from families with incomes below the poverty line; or

(b) For which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; and

2. (a) For which there is a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach; or

(b) For which there is a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

Note: Section 2102(3) of the ESEA expressly applies only to the programs authorized in title II, part A of the ESEA, the Teacher and Principal Training and Recruiting Fund, and to the title II, part C Transition to Teaching Program. However, because the MSP authorized in Title II, part B of the ESEA includes no definition of the term ''high-need LEA,'' we believe it is reasonable to have the part A definition apply to this program as well. The Department will need to confirm that participating high-need LEAs meet this definition before it can award grants of title II, part B funds.

LEA poverty rates can be found in information about the ''Application Process'' for the Rural Education Achievement Program (REAP), on the Department's web site at the following address: *www.ed.gov/offices/OESE/reap.html*

The poverty rates are available only for LEAs that are included in the National Center for Education Statistics (NCES) Common Core of Data.

The total number of students in poverty in any LEA can be found on the Census Bureau web site at: *www.census.gov/housing/saipe/sd97/*

(Note: The number of children in poverty is the number in the sixth column.)

An applicant also should consider whether its proposed activities would be enhanced by including such other entities as: other mathematics, science, engineering, business, or teacher-training departments of higher education institutions; other LEAs; public charter schools, public or private elementary or secondary schools or consortia of these schools; businesses; professional organizations of scientists, engineers, and mathematicians; and nonprofit organizations with demonstrated effectiveness in improving the quality of mathematics and science teachers.

Authorized activities. The NSF program announcement identifies the activities that a partnership may carry out, consistent with the narrative and other content of its approved application and the activities authorized in section 2202(c) of the ESEA.

Supplement, not supplant. Section 2202(a)(4) of the ESEA requires a grantee to use funds the Department awards under the MSP to supplement, and not supplant, funds that the grantee otherwise would use for activities that the program authorizes.

Administration of grants. We administer all MSP grants funded with title II, part B funds under requirements of the Education Department General Education Regulations (EDGAR). Hence, a grantee must submit any programmatic or fiscal report to the Department, not to NSF. However, as part of the joint NSF-Department collaboration, the two agencies jointly will monitor grant activities and provide technical assistance. Moreover, the two agencies intend that Department-funded projects be joined with NSF-funded projects in a common system of collaboration and support coordinated by NSF.

Special application instructions. An application for title II, part B funds must conform to the NSF protocols; otherwise, NSF may reject the application. For this reason, we advise an applicant to review carefully both the grant solicitation announcement for the MSP that NSF published on January 31, 2002 (NSF–02–061), and NSF's general guidelines in the NSF Grant Proposal Guide (GPG). The complete text of the GPG is available electronically on the NSF web site at: *www.nsf.gov*

Other program requirements. If you are a member of a partnership receiving funds from the Department under this program, you must by law (section 2202(d)(1) of the ESEA) coordinate your use of these funds with any related activities that you or the partnership carry out with funds made available under section 203 of title II, part B of the Higher Education Act (the Partnership Program component of the Teacher Quality Enhancement Grant programs).

In addition, in implementing your project, we strongly encourage you to coordinate your activities with other Department programs that have teacher quality and mathematics and science components, including the following ESEA programs: title II, part A (Improving Teacher Quality State Grants); title I, part A, (Improving Basic Programs Operated by LEAs); title I, part F (Comprehensive School Reform); and title IV, part B (21st Century Community Learning Centers).

Applicable Regulations: (a) EDGAR in 34 parts 74, 75 except for §§ 75.200–75.210, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99. (b) The special rules announced in this notice.

For Applications and Further Information Contact: To obtain a copy of the NSF solicitation, visit the NSF web site at: *www.nsf.gov*

For further information on the Department of Education portion of the MSP, call or write Alexis Radocaj, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, S.W., Room 5W234, FOB6, Washington, DC 20202–6175. Telephone: (202) 401–0821, by FAX: (202) 260–3420; or via Internet at: *Alexis.Radocaj@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

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 person listed under *For Applications and Further Information Contact.*

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat reader, which is available free at this 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: *www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 6661.

Dated: March 25, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–7644 Filed 3–28–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–168–C]

Application to Export Electric Energy; PG&E Energy Trading-Power, L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: PG&E Energy Trading-Power, L.P. (''PGET-Power'') has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 29, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–6807 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 25, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized PGET-Power to transmit electric energy from the United States to Canada using the international transmission facilities of Detroit Edison, Minnesota Power, Niagara Mohawk and New York Power Authority. On August 25, 1998, in Order EA–168–A, DOE amended PGET-Power's electricity export authorization to add the remaining major transmission interconnections with Canada. That two-year authorization expired on August 25, 2000. On July 6, 2000, PGET-Power filed an application with FE for renewal of its export authority. That authorization was issued on September 7, 2000 and will expire on September 7, 2002. On March 7, 2002, PGET-Power again filed an application for a two-year renewal of its export authority.

PGET-Power is a power marketer that does not own or control any electric generation or transmission facilities nor does it have a franchised electric service territory in the United States. PGET-Power will purchase the electric energy to be exported at wholesale from electric utilities and Federal Power Marketing Administrations in the United States.

PGET-Power proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by PGET-Power has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the PGET-Power application to export electric energy to Canada should be clearly marked with Docket EA–168–C. Additional copies are to be filed directly with Sanford L. Hartman, Assistant General Counsel, PG&E Energy Trading—Power, L.P., 7500 Old Georgetown Road, Suite 1300, Bethesda, MD 20814–6161 and Ms. Sarah Barpoulis, Senior Vice President, PG&E Energy Trading—Power, L.P., 7500 Old Georgetown Road, Suite 1300, Bethesda, MD 20814–6161.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Orders EA–168. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–168 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on March 25, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–7593 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent to Solicit Competitive Applications/Proposals for Financial Assistance

AGENCY: Rocky Flats Field Office, Department of Energy (DOE).

ACTION: Notice of intent to solicit competitive applications/proposals for financial assistance.

SUMMARY: The Rocky Flats Field Office (RFFO) of the Department of Energy is entrusted to contribute to the welfare of the nation by providing the scientific foundation, technology, policy and institutional leadership necessary to

achieve efficiency in energy use, diversity in energy sources, a more productive and competitive economy, improved environmental quality, and a secure national defense. RFFO intends to fund a series of grants in special emphasis programs to encourage programs to train Native American, African American, Hispanic American, Asian-Pacific American, Women and Disabled Students to pursue training in the fields of sciences and engineering; and to fund local community projects contributing to diversity-related programs.

DATES: Applications may be submitted by April 29, 2002. Applications received by April 29, 2002 will be considered; applications received after that date may or may not be considered depending on the status of proposal review and selection.

ADDRESSES: Department of Energy, Rocky Flats Field Office, Contracts Management Division, 10808 Highway 93, Unit A, Golden, Colorado 80403–8200.

FOR FURTHER INFORMATION CONTACT: Elaine Nix, Department of Energy Rocky Flats Field Office, 10808 Highway 93, Unit A, Golden, Colorado 80403–8200, (303) 966–2054, for application forms and additional information. Completed applications or proposals must be sent to the addresses heading.

SUPPLEMENTARY INFORMATION: DOE RFFO is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles.

Availability Of Fiscal Year 2001 Funds: With this publication; DOE RFFO is announcing the availability of up to $300,000 in grant funds for fiscal year 2001. RFFO anticipates that four or less grants will be made for a total not-to-exceed $300,000. The awards will be made through a competitive process. Projects may cover a period of up to 5 years. Funding for out-years is dependent on appropriation from Congress. Length of awards may vary by applicant.

Restricted Eligibility: Eligible applicants for the purposes of funding under this notice include organizations and institutions residing in Colorado proposing to implement minority science and engineering projects in Colorado as described in the summary section of this announcement. Applicants are encouraged to propose project cost-sharing or sharing of in-kind services or resources. The awards will be made through a competitive process to organizations and institutions located in the State of Colorado. The Catalog of Federal Domestic Assistance number assigned to this program is 81.116.

Evaluation Criteria: All responsive Applications will be reviewed by a panel composed of Department of Energy RFFO representatives. Successful proposal(s) will be selected on the opinion of panel members of proposals most able to meet the objectives best able to meet the needs of this office.

Proposals must demonstrate and will be evaluated based on the following criteria:

1. Implementation plan demonstrates experience, qualifications, capabilities, and resources necessary to successfully accomplish the proposed activities. (25%)

2. Exhibits sound administrative and financial management practices. (25%)

- Ability and willingness to perform all administrative requirements of the grant.
- The relationship between direct and indirect costs, and other financial aspects of the proposed grant, demonstrates sound financial practices.
- Cost effectiveness of projects.

3. Relationship of the proposed project to the objectives of the solicitation. (25%)

4. Qualifications of key personnel. (10%)

- Adequacy of availability and level of expertise of proposed personnel resources.
- Level of expertise of key personnel as demonstrated in resumes containing relevant education, training, and experience (resumes should include relevant project work previously conducted by individuals of the team).

5. Successful past performance of similar projects. (15%)

- Proposals lacking records of relevant past performance will receive a neutral score.

DOE RFFO hereby reserves the right to fund, in part or whole, any, all, or none of the proposals submitted in response to this request. All applicants will be notified in writing of the action taken on their applications. Applicants should allow approximately 90 days for DOE evaluation. The status of any application during the evaluation and selection process will not be discussed with applicants. Unsuccessful applications will not be returned to the applicant.

Issued in Golden, Colorado, on March 21, 2002.

D. Elaine Nix,

Contracting Officer.

[FR Doc. 02–7589 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation

AGENCY: Albuquerque Operations Office, Department of Energy.

ACTION: Notice of availability of solicitation—Geothermal Resource Exploration and Definition II (GRED II).

SUMMARY: The U. S. Department of Energy (DOE), Albuquerque Operations Office (AL), anticipates issuing Solicitation No. DE-SC04–02AL67912 for a second program on Geothermal Resource Exploration and Definition. This program is in support of the Geothermal Energy Program and has the primary objective of developing collaborative efforts to support the exploration and definition of new geothermal resources in geographically diverse regions with the objective of providing additional geothermal power. Projects may consist of up to three phases: (1) Phase I is Resource Evaluation and may include new exploration work to discover a probable geothermal resource and select a site for drilling a geothermal exploration well; (2) Phase II is Drilling and Characterization and consists of the drilling of a test well, logging and coring as appropriate, and initial testing of the well; (3) Phase III is Testing and Assessment and consists of long term flow and temperature tests in the well and final assessment of the site. Proposed projects are for up to three years and may begin at any phase, but documentation will be required for all three phases. One or more projects will be funded under the Fiscal Year 2002 funding level of up to $600,000 with a maximum DOE cost share of 80%. Funding for subsequent years is dependent on Congressional appropriations and Departmental priorities.

DATES: The solicitation will be available on April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Erwin E. Fragua, Contract Specialist, DOE/AL, at (505) 845–6442 or by e-mail at *efragua@doeal.gov*. Fax number is (505) 845–5181/4210.

SUPPLEMENTARY INFORMATION: Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The solicitation will be

available on the Internet at the following web site: *http://e-center.doe.gov*. All questions concerning this solicitation must be in writing and submitted to the specialist listed above.

Issued in Albuquerque, New Mexico March 21, 2002.

Martha L. Youngblood,

Contracting Officer, Complex Support Branch, Office of Contracts and Procurement.

[FR Doc. 02–7591 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 18, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Approve Minutes; Review Agenda
6:20 p.m.—DDFO's Comments; Action Items; Budget Update; ES&H Issues; CAB Recommendation Status; EM Project Updates
6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m. Break
7 p.m.—Presentations

- Site Wide Sediment Controls.
- Chairs Meeting Report.

7:30 p.m.—Break
7:40 p.m.—Task Force and Subcommittee Reports

- Groundwater Operable Unit.
- Surface Water Operable Unit.
- Waste Operations Task Force.
- Long Range Strategy/Stewardship.
- Community Concerns.
- Public Involvement, Nomination and Membership.

8:25 p.m.—Administrative Issues

- Review of Work Plan.
- Review of Next Agenda.
- Federal Coordinator Comments.
- Retreat Plans.

8:40 p.m.—Adjourn.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on March 26, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–7592 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EE–RM/TP–02–001]

RIN 1904–AB12

Energy Conservation Program for Consumer Products: Test Procedure for Refrigerators and Refrigerator-Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of extension of interim waiver.

SUMMARY: On August 3, 2001, the Department of Energy (DOE) published a **Federal Register** Notice granting an application for Interim Waiver to Electrolux Home Products (Electrolux) and published a Petition for Waiver from the DOE refrigerator and refrigerator-freezer test procedure. In today's action, DOE is extending the interim waiver for 180 days, or until July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Raymond at (202) 586–9611, E-mail: *michael.raymond@ee.doe.gov*, or Francine Pinto, Esq., (202) 586–7432, E-mail: *Francine.Pinto@HQ.DOE.GOV*.

SUPPLEMENTARY INFORMATION: On July 30, 2001, DOE issued an interim waiver from the DOE refrigerator and refrigerator-freezer test procedure to Electrolux. (66 FR 40689). Pursuant to 10 CFR 430.27(h), ''an interim waiver will terminate 180 days after issuance or upon the determination on the Petition for Waiver, whichever occurs first. An interim waiver may be extended by DOE for 180 days. Notice of such extension and/or any modification of the terms or duration of the interim waiver shall be published in the **Federal Register**, and shall be based on relevant information contained in the record and any comments received subsequent to issuance of the interim waiver.'' The 180-day period for the interim waiver ended on January 26, 2002.

Since DOE intends to promptly amend its refrigerator and refrigerator-freezer test procedures so as to eliminate any need for continuation of the waiver, DOE has determined that it is appropriate to grant an extension of the interim waiver to Electrolux for an additional 180 days, or until July 25, 2002. Before that date, DOE will publish a direct final rule amending the refrigerator and refrigerator-freezer test procedure so as to permit all interested parties to calculate the long-time automatic defrost test period in the

same manner recommended by the Association of Home Appliance Manufacturers (AHAM) in its comment on Electrolux's petition. AHAM commented that the four-hour limitation of the test should commence when the defrost heater is initiated, rather than at the beginning of the second part of the two-part test period. AHAM stated that it has had discussions with its members regarding its proposed change, and is not aware of anyone who disagrees with its position.

DOE views this change to the test procedure as noncontroversial and does not anticipate any adverse comments. In fact, all comments received subsequent to issuance of the interim waiver were favorable to this change to the test procedure. At the same time as the publication of the direct final rule, DOE will issue a notice of proposed rulemaking (NOPR) with the same amendment as contained in the direct final rule so that if adverse comments are received the comments can be addressed in a subsequent final rule based on the NOPR.

Issued in Washington, DC, on March 25, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 02–7590 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–7]

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 March 18, 2002 Through March 22, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020111, DRAFT EIS, AFS, MT, Lolo National Forest Post Burn Management Activities, Implementation, Ninemile, Superior and Plains Ranger Districts, Mineral Missoula and Sanders Counties, MT, *Comment Period Ends:* May 13, 2002, *Contact:* Deborah L. R. Austin (406) 329–3750.

EIS No. 020112, DRAFT EIS, AFS, ID, Brush Boulder Project, Proposed Vegetation Management, Road Construction, Reconstruction and Decommissioning, North Fork Payette River, Boise National Forest, Cascade Ranger District, Valley County, ID, *Comment Period Ends:* May 13, 2002, *Contact:* Keith Dimmett (208) 382–7430.

EIS No. 020113, FINAL EIS, BLM, NM, Santo Domingo Pueblo and Bureau of Land Management Proposed Land Exchange Project, Sandoval and Santa Fe Counties, NM, *Wait Period Ends:* April 29, 2002, *Contact:* Debby Lucero (505) 761–8787.

EIS No. 020114, DRAFT EIS, BLM, CA, Imperial Sand Dunes Recreation Area, Revising and Updating the Recreation Area Management Plan and Amendment to the California Desert Conservation Area Plan, Imperial County, CA, *Comment Period Ends:* June 28, 2002, *Contact:* Jim Komastinsky (760) 337–4427.

EIS No. 020115, FINAL EIS, FHW, MO, MO–63 Corridor Project, Transportation Improvement extending from south of the Phelps/Maries County Line and South of Route W near Vida, Funding and COE Section 404 Permit, City of Rolla, Phelps and Maries Counties, MO, *Wait Period Ends:* April 29, 2002, *Contact:* Allen Masuda (573) 638–2620.

EIS No. 020116, DRAFT EIS, COE, FL, Miami River Project, River Sediments Dredging and Disposal Maintenance Dredging, Dredged Material Management Plan, Biscayne Bay, City of Miami, Miami-Dade County, FL, *Comment Period Ends:* May 13, 2002, *Contact:* Kenneth R. Dugger (904) 232–1686.

EIS No. 020117, DRAFT SUPPLEMENT, FHW, WV, New River Parkway Project, New and Relevant Information, Design, Construction and Management between I–64 Interchanges to Hinton, Raleigh and Summers Counties, WV, *Comment Period Ends:* June 07, 2002, *Contact:* Greg Akers (304) 558–2885.

EIS No. 020118, DRAFT EIS, FHW, NC, Second Bridge to Oak Island project, Transportation Improve from SR–1104 (Beach Drive) to NC–211, COE Section 404 Permit and US Coast Guard Permit, Federal Aid Project No. STP.1105(6), State Project No. 8.2231201, and TIP NO. R–2245, Brunswick County, NC, *Comment Period Ends Due:* April 29, 2002, *Contact:* Nicholas L. Graf (919) 856–4346.

EIS No. 020119, DRAFT EIS, BPA, WA, Maiden Wind Farm Project, Proposes to Construct and Operate up to 494 megawatts (MW) Wind Generation on Privately- and Publicly-Owned Property, Conditional Use Permits, Benton and Yakima Counties, WA, *Comment Period Ends:* May 15, 2002, *Contact:* Sarah Branun (503) 230–5115. This document is available on the Internet at: *http://www.efw.bpa.gov.*

EIS No. 020120, FINAL EIS, CGD, Programmatic EIS—Integrated Deepwater System Project, For Surface, Air, Logistics Communication and Sensor Systems, To Replace Its Aging Nation-Wide System, Nation-Wide, *Wait Period Ends:* April 29, 2002, *Contact:* Eric Johnson (202) 267–1665.

Amended Notices

EIS No. 020089, DRAFT EIS, FHW, WV, KY, Appalachian Corridor I–66 Highway Construction, US 23/119 south of Pikeville, KY eastward to the King Coal Highway southeast of Matewan, Funding and US Army COE Section 404 Permits Issuance, Pike County, KY and Mingo County, WV, *Comment Period Ends:* April 29, 2002, *Contact:* Jose Sepulveda (502) 223–6720. *Revision of FR Notice Published on 03/15/2002:* Federal Highway Administration Inadvertently Provided EPA with the Misspelling of the Contact Person's Name and the Incorrect Phone Number. The Correct Spelling of the Contact Person's Name is Sepulveda and the Correct Phone Number is 502–223–6720.

Dated: March 26, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–7647 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs

ERP No. D–AFS–F65030–IL Rating LO, Natural Area Trails Project, Construction, Reconstruction,

Maintenance and Designation of Trails for Hikers and Equestrian Use, Approval of Site-Specific Mitigation and/or Monitoring Standards, Shawnee National Forest, Jackson, Pope, Johnson, Union, Hardin and Saline Counties, IL.

Summary: EPA has no objections to the proposed repair, relocation and establishment of trails which are intended to reduce erosion and exotic plant introductions, and provide quality recreational experiences for equestrian users and hikers.

ERP No. D–BLM–K09807–NV Rating LO, Table Mountain Wind Generating Facility Project, Construction of a 150 to 205 Megawatt (MW) Wind Powered Electric Generation Facility and Ancillary Facilities, Right-of-Way Grant, Spring Mountain Range between the Communities of Goodsprings, Sandy Valley, Jean and Primm, Clark County, NV.

Summary: EPA expressed a lack of objections with the DEIS, supported the mitigation measures presented and commended BLM for its role in developing renewable energy sources.

ERP No. D–COE–E39056–FL Rating EC2, Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement Project, Fish and Wildlife Habitat Improvements, Construction, Operation and Maintenance, Osceola County, FL.

Summary: EPA requested additional information about the effects of each alternative, and expressed environmental concerns over the impacts of converting littoral wetland habitat into muck disposal islands.

ERP No. D–NOA–K91010–00 Rating EC2, US West Coast Fisheries for Highly Migratory Species Fishery Management Plan (FMP), Approval and Implementation, Ocean Waters off the States of Washington, Oregon and California a portion of the Exclusive Economic Zone (EEZ), WA, OR and CA.

Summary: The DEIS is progressive in its management of the highly migratory species fishery. However, EPA expressed environmental concern on the lack of information on bycatch in the fishery, benefits of particular mesh sizes for the drift gillnet fishery, Endangered Species Act coordination, and research actions to address information gaps.

ERP No. DB–COE–H36012–MO Rating EU2, St. Johns Bayou and New Madrid Floodway Project, Channel Enlargement and Improvement, Revised Information to Formulate and Analyze Additional Alternatives, Flood Control and National Economic Development (NED), New Madrid, Mississippi and Scott Counties, MO.

Summary: EPA rated the Authorized Project (alternative 2) as ''environmentally unsatisfactory-insufficient information'' (EU2) on the basis of significant loss of wetlands, uncertainty of achieving compensable mitigation, and an incomplete Clean Water Act Section 404(b)(1) evaluation. Alternative 3–2 was also rated EU–2 (same basis). Alternative 3–3 was rated ''environmental objections-insufficient information'' (EO–2) as this alternative reduces impacts to a contiguous tract of bottomland hardwood wetlands, and reduces the mitigation burden.

ERP No. DR–COE–H34028–00 Rating EU2, Missouri River Master Water Control Manual Review and Update, Mainstem Reservoir System, New and Updated Information, Missouri River Basin, SD, NE, IA and MO.

Summary: The Missouri River Master Manual RDEIS has no preferred alternative; thus, all alternatives were rated. The CWCP and MCP alternatives were rated ''environmentally unsatisfactory—insufficient information'' (EU–2), based on their environmental impacts which increase environmental degradation. Alternatives GP 1521, GP 1528, GP 2021 and GP 2028 were rated ''environmental concerns'' (EC–2). EPA also stated that a better discussion of a monitoring plan, and more specific discussion of how adaptive management will be implemented, should be included in the Final EIS.

ERP No. DS–FRC–L05053–WA Rating LO, Condit Hydroelectric (No. 2342) Project, Updated Information on an Application to Amend the Current License to Extend the License Term to October 1, 2006, White Salmon River, Skamania and Klickitat Counties, WA.

Summary: EPA believes that the overall environmental benefits that would be achieved by removing the dam at the end of the license term outweigh the loss of the relatively modest amount of power that the project contributes to the Western Systems Coordinating Council region of the North American Electric Reliability Council. EPA supports the selection of the Settlement Agreement alternative including recommended modifications.

Final EISs

ERP No. F–AFS–J08025–CO Nucla-Telluride Transmission Line Project, Permit Approval and Funding for Construction and Operation of a 115 kV Transmission Line between the Nucla Substation in Montrose County and either the Telluride or Sunshine Substations in San Miguel County, CO.

Summary: EPA expressed environmental concerns about a lack of quantitative analysis of the acreage of wetland and aquatic resource impacts. The level of these impacts was not clearly differentiated among the various alternatives.

ERP No. F–AFS–J65339–UT Solitude Mountain Resort Master Development Plan (MDP), Implementation, Special-Use-Permit and US Army COE Section 404 Permit Issuance, Wasatch-Cache National Forest, Salt Lake County, UT.

Summary: EPA expressed environmental concerns with water withdrawal for snowmaking associated with this project due to the potential for adverse impacts to aquatic life in Big Cottonwood Creek.

ERP No. F–AFS–L65315–ID West Fork Potlatch Timber Harvesting, Road Construction, Reforestation and Watershed Restoration, Palouse Ranger District, Clearwater National Forest, Latah County, ID

Summary: The final EIS adequately discloses the impacts and satisfactorily responded to most of EPA's comments on the draft EIS. The project is intended to benefit the landscape and EPA has no objection to the action as proposed.

ERP No. F–AFS–L65379–ID Little Weiser Landscape Vegetation Management Project, Implementation, Council Ranger District, Payette National Forest, Adams County, ID.

Summary: The final EIS adequately responded to EPA's comments on the draft EIS and EPA has no objection to the action as proposed.

ERP No. F–AFS–L65386–ID Little Blacktail Ecosystem Restoration Project, Health and Productivity of Terrestrial and Aquatic Habitats Improvement, Implementation, Idaho Panhandle National Forests, Sandpoint Ranger District, Bonner County, ID.

Summary: The final EIS responded to EPA's previous comments on the draft EIS and EPA has no objection to the action as proposed.

ERP No. F–DOE–L08057–OR Umatilla Generating Project, Gas-Fired Combined Cycle Electric Power Generation Plant Construction and Operation with a Nominal Generation Capacity of 550 megawatts (MW) for Connection to the Regional Grid at McNary Substation, Umatilla County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–L91016–AK American Fisheries Act Amendments 61/61/13/8: Amendment 61 Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Amendment 61 Groundfish of the Gulf of Alaska; Amendment 13 Bering Sea and Aleutian Islands King and Tanner Crab, and Amendment 8 to the Scallop Fishery off Alaska, Fishery Management Plans, AK.

Summary: EPA agrees with the conclusion that the weekly pollock landings and fish waste discharges by inshore processors during summer months raises environmental concerns about impacts to water quality. EPA recommends that the ROD commit to monitoring and follow-up mitigation measures to ensure that significant degradation of water quality and habitat do not result from the amendment.

ERP No. FE–NOA–L64015–AK Steller Sea Lion Protection Measures in the Alaska Groundfish Fisheries, Fishery Management Plans for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, AK.

Summary: EPA continues to have environmental concerns about the population viability of Steller sea lions.

Dated: March 26, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance, Office of Federal Activities.

[FR Doc. 02–7648 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7164–9]

National Symposium: Designating Attainable Uses for the Nation's Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is announcing plans for a national symposium on the topic of ''Designating Attainable Uses for the Nation's Waters.'' Interested citizens, government officials, and regulated parties are invited to attend the symposium. Potential speakers are invited to submit abstracts of presentations for consideration as case studies or new approaches addressing this topic. Many interested parties have expressed to EPA the need for additional guidance on establishing the protection levels or ''designated uses'' of waterbodies (*e.g.,* aquatic life, recreation, navigation) and the process to follow when making designated uses more or less protective. EPA believes it is important to resolve questions concerning use designations and is considering developing guidance addressing key questions. This symposium will help EPA hear diverse views on this subject.

DATES: The symposium will be held on June 3–4, 2002.

ADDRESSES: The symposium will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Cara Lalley, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Mail Code 4305, Washington, DC 20460; (202) 260–0314; *lalley.cara@epa.gov;* or visit *http://www.epa.gov/waterscience/standards/symposium.*

SUPPLEMENTARY INFORMATION: This symposium will include a series of short (15 minute) presentations, grouped by topic, by speakers selected from among those submitting abstracts in response to this announcement. It may also include short panel presentations, small group discussions, or an open comment session. Check *http://www.epa.gov/waterscience/standards/symposium* in May for a draft agenda.

If you need special accommodations at this meeting (for example, wheelchair access or sign language translators), you should contact Cara Lalley at (202) 260–0314 by May 24, 2002 so that EPA can make appropriate arrangements.

Dated: March 22, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–7635 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7165–9

Proposed Administrative Order on Consent With Compromise of CERCLA Response Costs

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed AOC.

SUMMARY: U.S. EPA is proposing to issue an Administrative Order on Consent (AOC) under section 106 of CERCLA at the Old American Zinc (OAZ) Superfund Site. Respondent has agreed to perform a clean up of all hazardous soil and site-related material in residential and other at-risk areas adjacent to the Site, as well as to establish control monitoring of off-site migrating air and liquid materials in order to prevent recontamination, in return for U.S. EPA waiving past response costs of approximately $71,847.55. U.S. EPA today is proposing to issue this AOC waiver of past costs because it achieves a necessary removal action at a Site where there is a problem of air-borne contamination of a nearby residential and high-risk area.

DATES: Comments on this proposed settlement must be received by April 29, 2002.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Ms. Janet Pope at (312) 353–0628 before visiting the Region V Office). Ms. Janet Pope, OPA (P–19J), U.S. Environmental Protection Agency, Region V, Office of Superfund, Removal and Enforcement Response Branch, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Ms. Janet Pope, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 353–0628.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Pope, Office of Public Affairs, at (312) 353–0628.

SUPPLEMENTARY INFORMATION: The OAZ Site is 132 acres in size and consists of the central Site that once held a smelter facility, and surrounding residential, industrial and commercial properties. The Site is bordered by Delmar Street on the north; Kings Highway and Rose Creek on the east; 45th Street on the west; and, railroad tracks of the Penn Central and Baltimore and Ohio lines on the south. The Site was discovered by the Illinois EPA in 1994. U.S. EPA became involved with the Site in 1999. After initial sampling and a November 1999 Site Assessment, U.S. EPA determined that contaminants of concern at the Site included arsenic, cadmium, lead and zinc. U.S. EPA determined that this represented an imminent and substantial threat to human health. After general notice and negotiations, between September 2000 and February 2002, U.S. EPA and the Respondent achieved an AOC for the removal action at the residential and other properties adjacent to the Site. In exchange for completion of the removal, U.S. EPA has offered the Respondent contribution protection, a covenant not to sue and waiver of the past response costs associated with the Site. These costs total approximately $71,847.55.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to Ms. Janet Pope of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

This action is taken under the authority of 42 U.S.C. section 122(i).

Wendy L. Carney,

Acting Director, Superfund Division.

[FR Doc. 02–7770 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7165–6]

Clean Water Act Section 303(d): Availability of Total Maximum Daily Loads (TMDLs) and Determinations That TMDLs Are Not Needed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 98 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Calcasieu and Ouachita river basins, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to a court order in the lawsuit *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.).

This notice also announces the availability for comment of EPA determinations that TMDLs are not needed for 20 waterbody/pollutant combinations in the Calcasieu and Ouachita river basins because new data and information show that water quality standards are being met. This proposed action would result in the removal of 20 waterbody/pollutant combinations from the Louisiana 303(d) list.

DATES: Comments must be submitted in writing to EPA on or before April 29, 2002.

ADDRESSES: Comments on the 98 TMDLs and the determinations that TMDLs are not needed for 20 waterbody/pollutant combinations should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs and the determinations that TMDLs are not needed are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *www.epa.gov/region6/water/tmdl.htm,* or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

EPA Seeks Comments on 98 TMDLs

By this notice EPA is seeking comment on the following 98 TMDLs for waters located within the Calcasieu and Ouachita river basins:

Subsegment	Waterbody name	Pollutant
030301	Calcasieu River & Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Contaminated sediments (Mercury, PAHs, and toxicity).
030306	Bayou Verdine (Estuarine)	Contaminated sediments (4,4′-DDT, Methoxychlor, PAHs, Zinc, Calcium, and toxicity).
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Contaminated sediments (Mercury, toxicity,and organics).
030305	Contraband Bayou (Estuarine)	Copper.
031201	Calcasieu River Basin—Coastal Bays and Gulf Waters to State 3 mile limit.	Mercury.
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Metals (Copper, Lead, and Mercury).
030304	Moss Lake (Estuarine)	Metals (Copper, Mercury).
030306	Bayou Verdine (Estuarine)	Metals (Mercury, Nickel).
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Metals (Copper, Nickel, and Mercury).
030305	Contraband Bayou (Estuarine)	Pathogen indicators.
030701	Bayou Serpent	Pesticides (Fipronil).
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Priority organics (PAHs).
030306	Bayou Verdine (Estuarine)	Priority organics (Phenols, and 1,2-Dichloroethane).
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Priority organics (PCBs, Tetrachloroethane, Hexachlorobenzene, Hexachlorobutadiene, and Bromoform).
030702	English Bayou—Headwaters to Calcasieu River	Suspended solids.
030702	English Bayou—Headwaters to Calcasieu River	Turbidity.
081501	Castor Creek—Headwaters to Little River	Chlorides.
0809(04)	Little Bayou Boeuf/Wham Brake (within segment 0809)	Dioxins.
080912	Tisdale Brake/Staulkinghead Creek from origin to Little Bayou Boeuf.	Dioxins.
080101	Ouachita River—Arkansas State Line to Columbia Lock and Dam (Scenic from the Arkansas State Line to intersection with Bayou Bartholomew—22 miles).	Mercury.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Nitrogen.
080102	Bayou Chauvin	Noxious aquatic plants.
080201	Ouachita River—Columbia Lock and Dam to Jonesville	Nutrients.

Subsegment	Waterbody name	Pollutant
080302	Black River—Corps of Engineers Control Structure to Red River.	Nutrients.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Nutrients.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Nutrients.
080910	Clear Lake	Nutrients.
081002	Joe's Bayou—Headwaters to Bayou Macon	Nutrients.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou).	Nutrients.
081202	Lake St. Joseph (Oxbow Lake) Nutrients.	
080201	Ouachita River—Columbia Lock	Organic enrichment/low DO.
080501	Bayou de L'Outre—Arkansas State to Ouachita River (Scenic).	Organic enrichment/low DO.
080607	Corney Bayou—from Arkansas State Line to Corney Lake (Scenic).	Organic enrichment/low DO.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Organic enrichment/low DO.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Organic enrichment/low DO.
080910	Clear Lake	Organic enrichment/low DO.
081002	Joe's Bayou—Headwaters to Bayou Macon	Organic enrichment/low DO.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou).	Organic enrichment/low DO.
081202	Lake St. Joseph (Oxbow Lake)	Organic enrichment/low DO.
080102	Bayou Chauvin—Headwaters to the Ouachita River	Pathogen indicators.
080610	Middle Fork of Bayou D'Arbonne—From origin to Bayou D'Arbonne Lake (Scenic).	Pathogen indicators.
080905	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Pathogen indicators.
080910	Clear Lake	Pathogen indicators.
081001	Bayou Macon	Pathogen indicators.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Pathogen indicators.
080901	Boeuf River—Arkansas State Line to Ouachita River	Pesticides (Carbofuran, DDT, and Toxaphene).
080903	Big Creek—Headwaters to Boeuf	Pesticides (Carbofuran, Atrazine, DDT, and Methyl Parathion).
081001	Bayou Macon	Pesticides (DDT).
081002	Joe's Bayou—Headwaters to Bayou Macon	Pesticides (Carbofuran, and DDT).
081201	Tensas River—Headwaters to Jonesville including Tensas Bayou.	Pesticides (Carbofuran, Toxaphene, and DDT).
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Phosphorus.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Priority organics (Dioxins).
081501	Castor Creek—Headwaters to Little River	Salinity/TDS.
080202	Bayou Louis	Siltation.
080901	Boeuf River—Arkansas State Line to Ouachita River	Siltation.
080102	Bayou Chauvin	Suspended solids.
080901	Boeuf River—Arkansas State Line to Ouachita River	Suspended solids.
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou).	Suspended solids.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Suspended solids.
080910	Clear Lake	Suspended solids.
081001	Bayou Macon—Arkansas State Line to Tensas River	Suspended solids.
081002	Joe's Bayou—Headwaters to Bayou Macon	Suspended solids.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou).	Suspended solids.
081202	Lake St. Joseph (Oxbow Lake)	Suspended solids.
080102	Bayou Chauvin	Turbidity.
080901	Boeuf River—Arkansas State Line to Ouachita River	Turbidity.
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou).	Turbidity.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Turbidity.
081001	Bayou Macon—Arkansas State Line to Tensas River	Turbidity.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou).	Turbidity.

EPA Seeks Comments on Proposed Determinations That 20 TMDLs for Waterbody/Pollutant Combinations Are Not Needed Due to Assesssment of New Data and Information That Shows They Are Meeting WQS

Subsegment	Waterbody name	Pollutant
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (includes Coon Island and Clooney Island Loops).	Ammonia
030302	Lake Charles (Estuarine)	Non-priority organics
030306	Bayou Verdine	Non-priority organics
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Non-priority organics
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Other inorganics
030302	Lake Charles (Estuarine)	Priority organics
030303	Prien Lake	Priority organics
030304	Moss Lake (Estuarine)	Priority organics
030305	Contraband Bayou (Estuarine)	Priority organics
030401	Calcasieu River—Calcasieu Ship Channel Below Moss Lake to the Gulf of Mexico (Estuarine) (Includes Monkey Island Loop).	Priority organics
030402	Calcasieu Lake (Estuarine)	Priority organics
080102	Bayou Chauvin—Headwaters to the Ouachita River	Ammonia
080901	Boeuf River—Arkansas State Line to Ouachita River	Ammonia
080905	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Ammonia
081401	Dugdemona River—Headwaters to junction with Big Creek	Dioxins
081001	Bayou Macon—Arkansas State Line to Tensas River	Nutrients
081402	Dugdemona River—From Big Creek to Little River	Organic enrichment/low DO
081609	Hemphill Creek—Headwaters to Catahoula Lake (includes Hair Creek).	Organic enrichment/low DO
080901	Boeuf River—Arkansas State Line to Ouachita River	Phosphorus
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou).	Phosphorus

EPA requests that the public provide any water quality related data and information that may be relevant to the calculations for these 98 TMDLs, or any other comments relevant to the 20 proposed determinations that TMDLs are not needed. EPA will review all data and information submitted during the public comment period and revise the TMDLs and determinations where appropriate. EPA will then forward the TMDLs to the Court and the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the TMDLs into its current water quality management plan. EPA also will revise the Louisiana 303(d) list as appropriate.

Dated: March 21, 2002.

Jayne Fontenot,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 02–7771 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 25, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current 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 May 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0370.

Title: Part 32, Uniform System of Accounts for Telecommunications Companies.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 239.

Estimated Time per Response: 6,123.41 hrs. (avg.).

Frequency of Response: Recordkeeping; on occasion reporting requirements.

Total Annual Burden: 1,463,496 hrs.

Total Annual Costs: None.

Needs and Uses: The Uniform System of Accounts is an historical financial accounting system that reports the results of operational and financial events in a manner that enables both management and regulators to assess these results within a specified accounting period. Subject respondents are telecommunications companies. Entities having annual revenues from regulatory telecommunications operations of less than $114 million are designated as Class B and are subject to a less detailed accounting system than are those designated as Class A companies. In the Order on Reconsideration issued in CC Docket Number 00–199, the FCC reinstated Account 3400, Accumulated Amortization-Tangible.

OMB Control Number: 3060–0556.

Title: Special Requirements for 406.025 MHz EPIRBs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individual or household; business and or other profit entities.

Number of Respondents: 9,500.

Estimated Time per Response: 5.04 mins (0.084 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 798 hours.

Total Annual Cost: $0.

Needs and Uses: 47 CFR Section 80.1061 requires owners of 406.025 MHz Emergency Position Indicating Radiobeacons (EPIRBs) to register information such as name, address, and type of vessel with the National Oceanic and Atmospheric Administration (NOAA). If the collection were not conducted, NOAA would not have access to this information, which would increase the time needed to complete a search and rescue operation.

OMB Control Number: 3060–0896.

Title: Broadcast Auction Form Exhibits.

Form Number: FCC 175.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, local, or tribal government.

Number of Respondents: 5,650.

Estimated Time per Response: 0.5 to 88 hrs.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 10,903 hrs.

Total Annual Costs: $32,535,500.

Needs and Uses: The FCC Rules require that broadcast auction participants submit exhibits disclosing ownership, bidding agreements, and engineering data. The Commission staff use these data to ensure that applicants are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive the new entrant bidding credit, if applicable. Exhibits regarding joint bidding agreements are designed to prevent collusion. Submission of engineering exhibits for non-table services enables the Commission to determine which applications are mutually exclusive.

OMB Control Number: 3060–0906.

Title: Annual DTV Report.

Form Number: FCC 317.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 525.

Estimated time per response: 2.5 to 4.0 hours.

Frequency of Response: Recordkeeping; annual reporting requirement.

Total annual burden: 1,150.

Total annual costs: $52,500.

Needs and Uses: The FCC has established a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees in compliance with section 336(e)(1) of the Telecommunications Act of 1996. On October 11, 2001, the Commission adopted a Report and Order, which extended this requirement to noncommercial educational television licensees. Licensees use FCC Form 317 to report whether they provided ancillary or supplementary services, which services were provided, the services provided that are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. The data are collected annually from digital television licensees. Licensees providing services subject to a fee are also required to file FCC Form 159 (3060–0589) annually to remit the required fee. Each licensee will be required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. The FCC staff uses the data to ensure that DTV licensees comply with the requirements of section 336(e) of the Communications Act.

OMB Control Number: 3060–1003.

Title: Telecommunications Carrier Emergency Contact Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; and State, local or tribal government.

Number of Respondents: 5,000.

Estimated Time per Response: 10 mins. (0.167 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 834 hrs.

Total Annual Costs: None.

Needs and Uses: In response to the events of September 11, 2001, the FCC created a Homeland Security Policy Council to assist the Commission in evaluating and strengthening measures for protecting U.S. communications infrastructure and facilities from further terrorist attacks; to assist the Commission in ensuring rapid restoration of communications capabilities after disruption by a terrorist threat or attack; and to assist the Commission in ensuring that public safety, public health, and other emergency and defense personnel have effective communications services available to them in the immediate aftermath of any terrorist attack within the United States. To fulfill this mission, the FCC's Homeland Security Policy Council will contact key communications providers to determine the extent of a communications disruption and appropriate agency response.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7578 Filed 3–28–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2541]

Petitions for Reconsideration of Action in Rulemaking Proceedings

March 21, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–

A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by April 15, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotments (MM Docket No. 01–5).

Number of Petitions Filed: 1.

Subject: Amendment of the Digital TV Table of Allotments (MM Docket No. 00–121, RM–9674).

Number of Petitions Filed: 1.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7566 Filed 3–28–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information required by FEMA to revise National Flood Insurance Program Maps.

SUPPLEMENTARY INFORMATION: With the passage of the Flood Disaster Protection Act of 1973, an owner of a structure, with a federally backed mortgage, located in the 1-percent annual chance floodplain, was required to purchase federal flood insurance. This was in response to the escalating damage caused by flooding and the unavailability of flood insurance from commercial insurance companies. However, the 1-percent annual chance floodplain may change due to changes within the floodplain, or may be more accurately depicted through the use of more up-to-date methods and data. FEMA will issue a Letter of Map Revision to officially revise the 1-percent annual chance floodplain.

Collection of Information

Title. Revisions to National Flood Insurance Program Maps: Application Forms for Letters of Map Revision and Conditional Letters of Map Revision.

Type of Information Collection. Revision of a currently approved collection.

OMB Number: 3067–0148.

Form Numbers. FEMA forms 81–89, 81–89A, 81–89B, 81–89C, 81–89D, 81–89E.

Abstract. The certification forms (referred to as MT–2 series forms) are designed to assist requesters in gathering information that FEMA needs to revise a National Flood Insurance Program map.

FEMA Form 81–89, Overview and Concurrence Form, describes the location of the request, what is being requested, and what data are required to support the request. In addition, NFIP regulations 44 CFR 65.5(a)(4) require that a community official certify that the request complies with minimum floodplain management criteria specified in 44 CFR 60.3. This form ensures that this requirement is fulfilled prior to the submittal of the request to FEMA.

FEMA Form 81–89A, Riverine Hydrology and Hydraulics Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of hydrologic and hydraulic analyses performed in support of a revision request. It also addresses more common regulatory issues.

FEMA Form 81–89B, Riverine Structures Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of revision requests involving new or modified structures in riverine flood hazard areas; FEMA Form 81–89C, Coastal Analysis Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of coastal analyses performed in support of a revision request. It also addresses more common regulatory issues.

FEMA Form 81–89D, Coastal Structures Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of revision requests involving new or modified structures in coastal flood hazard areas.

FEMA Form 81–89E, Alluvial Fan Flooding Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of alluvial fan flooding analyses performed in support of a revision request.

Estimated Total Annual Burden Hours.

FEMA Forms	No. of Respondents (A)	Frequency of Responses (B)	Hours Per Response (C)	Annual Burden Hours (A x B x C)
81–89	1,400	Annual	1.0	1,400
81–89A	1,400	Annual	3.0	4,200
81–89B	1,400	Annual	7.0	9,800
81–89C	1,400	Annual	1.0	1,400
81–89D	1,400	Annual	1.0	1,400
81–89E	1,400	Annual	1.0	1,400
Total	1,400		14.0	19,600

Estimated Cost. Cost to respondents is estimated to be $980,000 annually (19,600 annual burden hours x $50 per hour), while the cost to the Federal Government is estimated to be $2,500,000 annually.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Cecelia Lynch, FEMA Federal Insurance and Mitigation Administration at (202) 646–7045 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.anderson@fema.gov.*

Dated: March 22, 2002.

Reginald Trujillo,

Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7637 Filed 3–28–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning a continuing collection of information for personal property loss or damage claims made by FEMA employees.

SUPPLEMENTARY INFORMATION: 31 U.S.C 3721 requires employees of FEMA who file a claim with the Agency for the loss or damage to personal property to substantiate the claim as a condition of payment by the agency. Agency personnel provide information to support their claims against FEMA for personal property damage incident to their service. The Agency's substantiation requirements are set forth in 44 CFR 11.76. The information provided by personnel is used by FEMA to determine the appropriate disposition and payment of claims.

Collection of Information

Title: Claims of Federal Personnel for Personal Property Loss or Damage.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0167.

Form Numbers: None.

Abstract: 31 U.S.C 3721 requires FEMA employees who file a claim with the Agency for the loss or damage to personal property to substantiate their claims as a condition of payment by the agency. Agency personnel provide information to make claims against FEMA for personal property damage incident to their service. The Agency's substantiation requirements are set forth at 44 CFR 11.76. The information provided by personnel is used by FEMA to determine the appropriate disposition and payment of claims.

Affected Public: Federal Government.

Estimated Total Annual Burden Hours: 7.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Edward Broyles, General Attorney, FEMA Office of General Counsel, (202) 646–3961, for additional information. You may contact Ms. Muriel B. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.anderson@fema.gov.*

Dated: March 20, 2002.

Reginald Trujillo,

Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7638 Filed 3–28–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–2]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Federal Housing Finance Board (Finance Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to members and other eligible institutions.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Gwen R. Grogan, Acting Deputy Director, Office of Supervision (202) 408–2892; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks to: (1) Accept demand deposits from member institutions; (2) be drawees of payment instruments; (3) engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions; and (4) have such incidental powers as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Finance Board.

Section 975.6(c) of the Finance Board's regulations (12 CFR 975.6(c)) provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedule is for the only Bank that offers item processing services to its members and other qualified financial institutions. Most of the remaining Banks provide other Correspondence Services, which may include securities safekeeping, disbursements, coin and

currency, settlement, electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (2002 NOW/DDA Services) (Services not provided)

District 2.—Federal Home Loan Bank of New York (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 4.—Federal Home Loan Bank of Atlanta (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 5.—Federal Home Loan Bank of Cincinnati (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 6.—Federal Home Loan Bank of Indianapolis (2002 NOW/DDA Services)

Fee Schedules

Checking Account Processing

I.—CHECKING ACCOUNT SERVICE TRANSACTION CHARGES

[Effective February 1, 2000]

Monthly volume	Safekeeping	Turnaround (daily or cycled)	Complete	Full service image*		Limited service image*	
	Per item	Per item	Per item	Per item	Per statement	Per item	Per statement
0–5,000	$.054	$.0675	$.0875	$.06	$.40	$.02	$.40
5–10,000	.046	.0625	.0855	.06	.40	.02	.40
10–15,000	.045	.0585	.0835	.06	.40	.02	.40
15–25,000	.040	.0515	.0825	.06	.40	.02	.40
25–50,000	.039	.0475	.0805	.06	.40	.02	.40
50–75,000	.035	.0445	.0765	.06	.40	.02	.40
75–100,000	.032	.0415	.0755	.06	.40	.02	.40
100,000 and up	.030	.0385	.0745	.06	.40	.02	.40

Note.—Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

Monthly volume	Image archive limited service*	CD image limited service	
	Per item	Per item	Per CD
0–5,000	$.0125	$.0075	$10.00
5–10,000	.0125	.0075	10.00
10–15,000	.0125	.0075	10.00
15–25,000	.0125	.0075	10.00
25–50,000	.0125	.0075	10.00
50–75,000	.0125	.0075	10.00
75–100,000	.0125	.0075	10.00
100,000 and up	.0125	.0075	10.00

Note.—Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

II. ANCILLARY SERVICE FEES

Large Dollar Signature Verification	$0.75
Over-the-counters and Microfilm	0.045
Return Items	2.40
Photocopies** and Facsimiles	2.50
Certified Checks	1.00
Invalid Accounts	0.65
Late Returns	0.50
Invalid Returns	0.50
No MICR/OTC	0.50
Settlement Only	100.00 per month
+Journal Entries	3.00 each
Encoding Errors	2.75
Fine Sort Numeric Sequence	0.02
High Dollar Return Notification	N/C
Debit Entries	N/C
Credit Entries	N/C
Standard Stmt. Stuffers (up to 2)***	N/C

II. ANCILLARY SERVICE FEES—Continued

Statement Stuffing Savings (Non DDA Accounts)	0.20

Note. Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at no additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

**Photocopy request of 50 or more are charged at an hourly rate of $15.00.

***Each additional (over 2) will be charged at $.02 per statement.

b. ACH Fees

Tape transmission	$8.50 per tape.
Or originations	.045 per item.
NACHA, MPX	Actual Federal Reserve charges.
ACH entries clearing through our R&T number	.25 per item.
Settlement only	65.00 per month.
ACH returns/NOC	2.50 per item.

Collected balances will earn interest at CMS daily-posted rate.

Prices effective April 1, 1993.

c. Deposit Services

FEDERAL HOME LOAN BANK OF INDIANAPOLIS

Pre-encoded Items:	
City	$0.045 per item.
RCPC	.055 per item.
Other Districts	.09 per item.
Unencoded	.15 per item.
Food Stamp	.14 per item.
Photocopies*	2.50 per copy.
Adjustments on pre-encoded work	2.75 per error.
EZ Clear	.14 per item.
Coupons	8.25 per envelope.
Collections	6.00 per item.
Cash Letter	2.00 per cash letter.
Deposit Adjustments	.30 per adjustment.
Debit Entries	N/C.
Credit Entries	N/C.
Microfilming	N/C.
Mortgage Remittance (Basic Service)	.35.
Settlement only	100.00 per month.
+Journal Entries	3.00 each.
Courier (Photocopy request of 50 or more are charged at an hourly rate of $15.00.)	
Indianapolis (city):	8.25 per location, per day, per pick-up.
Outside Indianapolis:	prices vary per location.

N/C—No Charge.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

District 7.—Federal Home Loan Bank of Chicago (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 8.—Federal Home Loan Bank of Des Moines (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 9.—Federal Home Loan Bank of Dallas (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 10.—Federal Home Loan Bank of Topeka (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 11.—Federal Home Loan Bank of San Francisco (2002 NOW/DDA services) (Does not provide item processing services for third party accounts)

District 12.—Federal Home Loan Bank of Seattle (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

Dated: March 22, 2002.

By the Federal Housing Finance Board.

James L. Bothwell,

Managing Director.

[FR Doc. 02–7529 Filed 3–28–02; 8:45 am]

BILLING CODE 6725–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–1]

Notice of Availability of the Federal Housing Finance Board Information Quality Guidelines

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) has made available its Information Quality Guidelines pursuant to the requirements of the Office of Management and Budget's (OMB's) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information

Disseminated by Federal Agencies, January 3, 2002.

DATES: Comments on the Finance Board's Information Quality Guidelines will be accepted on an ongoing basis.

ADDRESSES: Comments should be addressed to the Secretary to the Board, Federal Housing Finance Board, using the ''Feedback'' button on the Finance Board Web site, or by regular mail to 1777 F St., NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Andy Taylor, Acting Chief Information Officer, (202) 408–2830; or Jennifer R. Salamon, Information Technology Program Analyst, (202) 408–2974; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L.106–554) directs OMB to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies.'' The OMB guidelines require each agency to prepare a draft report providing the agency's information quality guidelines. Each agency further is required to publish a notice of availability of this draft report in the **Federal Register** and to post this report on its Web site by April 1, 2002, to provide an opportunity for public comment. The Finance Board will post its draft Information Quality Guidelines on its Web site at *www.fhfb.gov* and encourages public comment on the report.

Dated: March 22, 2002.

James L. Bothwell,

Managing Director.

[FR Doc. 02–7530 Filed 3–28–02; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Dorothy M. Mawn, Woburn, Massachusetts, James Lawrence Mawn, Malden, Massachusetts, Russell A. Mawn, Vestavia Hills, Alabama, Diane Desenberg and Tomas M. Mawn, III, both of Sarasota, Florida, Mary Elizabeth Mawn-Ferullo, Woburn, Massachusetts, Martha J. Robillard, Groton, Massachusetts, Dorothy Mawn Grandchildren's Trust, Woburn, Massachusetts (trustees Mary Elizabeth Mawn-Ferullo and Russel A. Mawn), The Thomas M. Mawn, Jr., Trust Fund B, Woburn, Massachusetts (trustees Dorothy M. Mawn, Mary Elizabeth Mawn-Ferullo, and Catherine A. Webb), and the Thomas and Dorothy Mawn Family Limited Partnership, Woburn, Massachusetts (general partners Mary Elizabeth Mawn-Ferullo and Russel A. Mawn), acting in concert to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire voting shares of Northern Bank & Trust Company, Woburn, Massachusetts.

2. Thomas M. Mawn, Jr., Trust Fund B, Woburn, Massachusetts; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire voting shares of Northern Bank & Trust Company, Woburn, Massachusetts.

3. Dorothy M. Mawn, Woburn, Massachusetts; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire voting shares of Northern Bank & Trust Company, Woburn, Massachusetts.

Board of Governors of the Federal Reserve System, March 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7553 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Mr. Jerry J. Williams, Naples, Florida; to retain voting shares of FirstBancorp, Inc., Naples, Florida, and thereby indirectly retain voting shares of Orion Bank, Naples, Florida.

Board of Governors of the Federal Reserve System, March 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7706 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise

noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Ames National Corporation, Ames, Iowa; to acquire 100 percent of the voting shares of United Bank & Trust N.A. (*de novo*), Marshalltown, Iowa.

2. Metropolitan Bank Group, Inc., Chicago, Illinois; to acquire 41.18 percent of the voting shares of Firstcom Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire voting shares of The First Commercial Bank, Chicago, Illinois.

3. Metropolitan Bancorp Inc., Chicago, Illinois; to acquire 38.24 percent of the voting shares of Firstcom Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire voting shares of The First Commercial Bank, Chicago, Illinois.

4. Plaza Bancorp Inc., Chicago, Illinois; to acquire 20.57 percent of the voting shares of Firstcom Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire voting shares of The First Commercial Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, March 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7551 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-6783) published on page 13183 of the issue for Thursday, March 21, 2002.

Under the Federal Reserve Bank of Kansas City heading, the entry for Country Square Bancshares, Inc., Meriden, Kansas, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Countryside Square Bancshares, Inc., Meriden, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The State Bank of Meriden, Meriden, Kansas.

Comments on this application must be received by April 15, 2002.

Board of Governors of the Federal Reserve System, March 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7552 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Peoples Bancorp, Rock Valley, Iowa; to become a bank holding company by acquiring 100 percent of Peoples Bank, Rock Valley, Iowa.

Applicant also has applied to retain Peoples Financial Inc., Rock Valley, Iowa, and thereby engage in insurance activities in a place less than 5,000, pursuant to Section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, March 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7705 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

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

Proposed Project 1. Voluntary Survey to Assess the Implementation of the Federal Grant Streamlining Program under Public Law 106–107—NEW—The Department of Health and Human Services, as the lead agency in the implementation of the Federal Financial Assistance Management Improvement Act of 1999, will conduct a study for gauging the overall performance of the Federal government in meeting the standards for the streamlined grants process. This survey will be used to improve the efficiency, quality, and timeliness of the grants awarding process, as well as to strengthen its partnership with the grantee community. Respondents: State, Local or Tribal Government, Business or other for-profit, non-profit Institutions—

Reporting Burden Information—Number of Respondents: 13,000; Frequency of Response: once every two years; Average Burden per Response: 15 minutes; Total Burden 3,250 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov,* or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Comments should be received within 60 days of this notice.

Dated: March 21, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–7556 Filed 3–28–02; 8:45 am]

BILLING CODE 4151–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Emergency Awards for Healthcare Under Section 319 of the PHS Act Grants for Immediate Response

AGENCY: Department of Health and Human Services.

ACTION: Notice of availability of funds.

SUMMARY: The Department of Health and Human Services (HHS) announces the availability of a competitive grant program for the purpose of providing emergency funding for health-related costs incurred by organizations as a result of the terrorist acts that occurred on September 11, 2001.

Name of Grant Program: Grants for Immediate Response.

Program Authorization: Section 319 of the Public Health Service Act, 42 U.S.C. 247d.

Amount of funding available: $140 million. There is no cap on the amount of funding for an applicant.

Eligible Applicants: Public entities, not-for-profit entities, and Medicare and Medicaid enrolled suppliers and institutional providers that incurred healthcare-related costs which were directly attributable to the public health emergency resulting from terrorist acts on September 11, 2001. Examples of applicants that may be eligible for this program include, but are not limited to, hospitals, clinics, faculty practices, mental health providers, blood centers, home health agencies, and ambulance companies.

This program is intended to provide funding to those organizations that were most directly affected in the disaster response efforts. Accordingly, in addition to meeting the organizational requirements described above, an applicant must also provide healthcare services in the following geographic areas:

NY: New York County, Queens County, Kings County, Bronx County, Richmond County, Westchester County, Nassau County.

NJ: Hudson County, Essex County, Bergen County, Union County, Middlesex County.

VA: Fairfax County, Arlington City, Alexandria City.

DC: Washington, D.C.

MD: Montgomery County, Prince George's County.

PA: Somerset County.

The highest priority for funding will be given to the following applicants:

- A healthcare entity that treated the greatest number of patients injured at a terrorist attack site (*i.e.,* World Trade Center; Pentagon; Somerset, PA plane crash site), particularly those entities that provided specialized services such as burn care and severe trauma care.
- A healthcare entity that is located closest to an attack site and/or where traffic disruptions and road/tunnel/bridge closings restricted patient access to the facility or services.

Applicants with multiple sites or operating divisions that are part of one corporation must submit one consolidated application for the entire corporate entity; however, a separate analysis must be provided for each site where losses are claimed. Applicants that are subsidiary corporations of a parent organization or system should only include information and data for their specific corporation. For systems with multiple corporate subsidiaries each corporate entity that requests grant support must file a separate application. This program is intended to cover the net losses to a corporation as a result of the September 11 terrorist acts; therefore, for a multi-site applicant, any losses at one site must be reduced by any gains at another site.

Applicants that submitted applications for the first round of funding ($35 million) under the Grants for Immediate Response program, but who were deemed ineligible or did not receive the full funding for which they were deemed eligible, must submit all information outlined in this notice, and must meet all requirements in this notice, in order to receive consideration for funding under this program.

Faith-based and community organizations that provide healthcare services, meet the above criteria and have incurred allowable costs are eligible to receive funding from this program. Individuals are not eligible for funding under this program.

Allowable costs: Healthcare-related costs incurred by an eligible applicant as a result of the terrorist acts on September 11, 2001. Requests can include costs incurred between September 11, 2001 and December 31, 2001. ''Healthcare-related costs'' is defined as increased expenses or lost revenues related to the provision of patient care.

Personnel costs, supplies, and contractual expenses for health care services are examples of allowable expenses. Lost or foregone revenues incurred during the period from September 11, 2001 through December 31, 2001, will also be considered eligible costs for the purposes of this program. All eligible costs must directly relate to the provision of health care.

Allowable costs are costs for which payment and/or reimbursement has not been (and is not expected to be) received and/or the applicant is not eligible for reimbursement. This program will cover only direct costs (*i.e.,* costs that can be specifically identified with a particular project or program).

Costs for which funding is awarded will be subject to verification and validation, including audits by the Office of the Inspector General, after grants are awarded. The grants are also subject to the general provisions applicable to Federal grants awarded by the Department of Health and Human Services (*see* 45 CFR parts 74 and 92), including applicable cost principles incorporated by those regulations. For profit organizations should pay particular attention to 45 CFR 74.81, which requires that no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization.

Unallowable costs: Unallowable costs include, but are not limited to, the following:

- Costs that are eligible for reimbursement or payment from any other sources (including FEMA funding for crisis counseling, emergency protective measures and damaged buildings, equipment, and vehicles)
- Research activities
- Legal costs
- Political and lobbying activities
- Subgrants to other organizations
- Purchase of real property
- Indirect costs and overhead
- Expenses intended to prepare for future similar events
- Increased expenses or lost revenues unrelated to the provision of healthcare
- Costs related to the start-up of new services

Applicant submission: All applications must be submitted to the following addresses:

1. HRSA Grants Application Center (Original Copy), 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879.
2. Division of Facilities Compliance and Recovery (Duplicate Copy), Room 10C–16, 5600 Fishers Lane, Rockville, MD 20857.

Applications must be postmarked by May 13, 2002, and must be received in time for submission to the Objective Review Committee. A legibly dated receipt from a commercial carrier or the U.S. Post Office will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. The submission of application spreadsheets, which must be done on disk or electronically, must comply with the above due date.

Application requirements: All of the information enumerated in items 1 through 9 below must be submitted in the application. All information must be submitted on standard size paper (8.5″ × 11″). Information must be submitted in the same order as presented below. Failure to address all information in each item may result in an applicant being deemed ineligible or receiving a reduced level of funding.

These application requirements include the submission of four spreadsheets. These spreadsheets must be submitted electronically or on disk, as well as by hard copy with the rest of the application. Further information on the spreadsheets and submission requirements is provided in item 9 below. Failure to adequately complete each set of spreadsheets may result in reduced or denied funding. Spreadsheets can be downloaded from the following Web site: *http://www.hrsa.gov/osp/gir2.htm.*

1. Standard Form 424 with attached assurances and certifications. The CFDA # for this program is 93.003. This form and attachments can be downloaded from the following Web site: *http://www.hrsa.gov/osp/gir2.htm.* Additionally, you may call Mr. Eulas Dortch at 301 443–8007 if you would like these forms mailed to you.

2. Narrative information. Information in this section may not exceed 6 pages. Any narrative information in excess of 6 pages may not be considered in the review of an application. Applicants with multiple sites must provide the narrative information broken out for each site (each site is allowed 6 pages of narrative).

a. Summary narrative of actions taken by the applicant in providing patient care services, or preparing to provide patient services, to victims of the World Trade Center, Pentagon, or Somerset, PA terrorist acts. Describe actions taken, and number of patients from the attack zones treated, and types of patient care provided. Information included in this section must reconcile with data contained in Spreadsheet(s) #1—Response Efforts and Access Restrictions.

b. Summary narrative of impediments resulting from the terrorist attacks, including traffic restrictions that prevented patients from accessing/utilizing your facility/service. Indicate your facility's location in relation to the traffic restrictions. Indicate what travel restrictions were imposed, the time period during which travel restrictions were in place, the area covered, and the extent to which patients and/or emergency vehicles could not access your facility or services. Provide an estimate of the total patients (inpatient and outpatient) that were unable to access your facility because of these restrictions, beginning September 11, 2001. Information included in this section must reconcile with data contained in Spreadsheet(s) #1—Response Efforts and Access Restrictions.

c. Summary narrative of total financial impact on healthcare services of the applicant directly attributable to the terrorist attacks had from September 11, 2001, through December 31, 2001. This should only address those services that provide or directly support healthcare services of the applicant. If the applicant provides services not directly related to the provision or support of healthcare services, those costs should be excluded from this application. Provide an estimate of the lost patient revenues and explain the methodology used in estimating the lost revenues. Provide an estimate of increased expenses and identify those activities that required additional expenses. Information included in this section must reconcile with data contained in Spreadsheet(s) #2—Breakdown of Lost Revenues and Increased Expenses.

d. Itemization and justification for all increased expenses and lost revenues described in 2c above. Funding can be sought for a combination of lost revenues and increased expenses; in such cases clearly delineate the amount attributable to lost revenue and the amount attributable to increased expenses. Increased expenses should be clearly itemized to show how each component of these costs was determined and calculated. The itemization of increased expenses must clearly identify and offset any additional revenues received due to the increased expenses. Lost revenues should be separately shown and also must be clearly itemized to show how each component of these costs was determined and calculated. The itemization of lost revenues must clearly identify and offset any reduced expenses related to lost revenues. All assumptions should be clearly identified and the basis for assumptions explained. Funds previously received under HRSA's Grants for Immediate Response program or any other funding relief must be clearly identified and it must be clear that eligible costs that were funded with any such grant award are not being duplicated in this request. Information included in this section must reconcile with data contained in Spreadsheet(s) #2—Breakdown of Lost Revenues and Increased Expenses.

e. Compare the operating results shown in the income statement for the 4-month period from September 2001 through December 2001 with the same period for 2000. In order to normalize the information being compared, identify all retroactive rate settlements (positive and negative), one-time transactions, and any other information that distorts the comparison and which occurred in either 2000 or 2001. Explain how these transactions impact the comparative analysis and make adjustments accordingly. The summary impact of all such transactions must be clearly identified on Spreadsheet #3 and narrative information must clearly document each transaction. Provide an explanation if the 4-month period during 2001 does not have a negative variance (as compared to the same 4-month period in 2000) equal to or greater than the increased expenses and decreased revenues for which grant funding is sought. This analysis must reconcile with data contained in Spreadsheet(s) #3—Breakout of Income and Expenses. Funding determinations will in part be based on an assessment of the negative variance (for the overall organization) in operating performance for September 2001 through December 2001 as compared to the same period during 2000.

f. If there is not a clear and direct link between any of the identified costs and the terrorist acts, provide an explanation of the relationship.

3. Identify the location where the services for which funding is sought were provided. Identify the closest intersection to the site where the applicant provides patient services. Include a map marking such location along with a legend showing relative distance and any travel restrictions noted in section 2b above. If funding for multiple sites is sought, note the location of each site.

4. List all sites where the applicant provides healthcare services, including sites for which losses are not requested in this application. For each site where losses have not been documented as part of this grant application, provide summary financial information explaining how those sites performed during the period from September 2001 through December 2001, in relation to performance during the same period in 2000.

5. From the internal financial statements of the applicant, a copy of the Income Statement/Comparative Statement of Operations for the entire corporation/organization along with all schedules showing operating statistics (inpatient and outpatient) and staffing/FTE information for each of the following periods. These statements and schedules should be included in the internal financial statements of the applicant and are to be submitted separate from, and in addition to, all spreadsheets required in item 2 above; however, information shown in the spreadsheets must reconcile to these statements and schedules. These statements and schedules shall be certified as true and accurate by the Chief Financial Officer of the applicant.

- Year-to-date for the 8 months ending August 31, 2000
- Year-to-date for the 8 months ending August 31, 2001
- Year-to-date for the 12 months ending December 31, 2000
- Year-to-date for the 12 months ending December 31, 2001

6. IRS confirmation of public or not-for profit status, or evidence of status as Medicare or Medicaid enrolled supplier or institutional provider.

7. Listing of any additional Federal, State, or private agencies or organizations and/or any insurance company from which funding relief and/or insurance (including business loss insurance) has been sought in relation to the September 11, 2001, terrorist acts (*e.g.*, HRSA, FEMA, Red Cross). Include amount of funding requested and description/explanation of basis for any such request, and the outcome or pending status of each request. Any funding that has been received must be clearly identified in your budget itemization and justification included in the narrative and shall be offset against any eligible losses to avoid duplicative funding. Identify and segregate any funding being sought for mental health services and explain why funding is not available from the $22 million provided by FEMA for crisis counseling.

8. Statement/assurance from an authorized representative of the applicant that:

a. Expenses/lost revenues for which grant funding is sought are not eligible for reimbursement and/or payment from Medicare, Medicaid, FEMA;

b. Reimbursement and/or payment will not be sought from Medicare, Medicaid, or FEMA for any expenses/lost revenues covered by the grant;

c. Grant funds will not be used to supplant any Federal or non-Federal funds that are received for the activities or purposes for which funding is sought; and

d. If the applicant has sought funding from another source for the same expenses and/or lost revenues and is uncertain as to whether such request(s) will be approved, it must include an assurance that if that funding is received, funding from this program will be returned.

9. Application Spreadsheets. Four spreadsheets are described below. Spreadsheets should be downloaded from the following Web site: *http://www.hrsa.gov/osp/gir2.htm.*

Do not change the format or add any additional rows or columns to the spreadsheets. All of the spreadsheets must be completed by all applicants. If any of the information requested on a spreadsheet is not readily available, then reasonable efforts will be made to develop and/or obtain the information. Be sure to submit spreadsheets for all components of a corporation/organization as specified below. Spreadsheets can be found at the following website. These spreadsheets must be submitted electronically or by disk, in accordance with the specific instructions in this section. Electronic submissions should be sent to the following e-mail address: *gir2@hrsa.gov.* In the subject line identify the applicant name and Employee Identification Number. If submitting the information by disk, it must be sent to the following address: Mr. Eulas Dortch, HRSA/OSP/DFCR, 5600 Fishers Lane, Room 10C–16, Rockville, MD 20857.

Disks and/or electronic submission of application spreadsheets are subject to the same due dates as the application. Additionally, a hard copy of all spreadsheets must be included with each application. Each hard copy spreadsheet must be signed by the Chief Financial Officer, attesting to the accuracy of the information.

a. *Spreadsheet #1*—Response Efforts and Access Restrictions. A separate spreadsheet must be completed for each site where losses are claimed. Additionally, a consolidated spreadsheet must be completed for the entire corporation/organization.

b. *Spreadsheet #2*—Breakdown of Lost Revenues and Increased Expenses. A separate spreadsheet must be completed for each site where losses are claimed. Additionally, a consolidated spreadsheet must be completed for the entire corporation/organization. The consolidated spreadsheet may not exceed the sum of the losses at individual sites. The maximum amount an applicant will be eligible to receive shall not exceed the losses documented in these spreadsheets.

c. *Spreadsheet #3*—Breakout of Income and Expenses. A separate spreadsheet must be completed for each site where the applicant provides healthcare services. Additionally, a consolidated spreadsheet must be completed for the entire corporation/organization.

d. *Spreadsheet #4*—Operating Statistics and Staffing Information. A separate spreadsheet must be completed for each site where the applicant provides healthcare services. Additionally, a consolidated spreadsheet must be completed for the entire corporation/organization.

Review Criteria: 1. Demonstration that the services provided, expenses incurred, and/or lost revenues for which the grant is sought are attributable to terrorist acts on September 11, 2001.

2. Soundness of the narrative.

3. Reasonableness and clarity of budget justification, particularly the methodology and calculations.

4. Consistency of documented costs with the negative financial impact shown in the financial statements.

5. Demonstration of most direct participation in the response efforts as evidenced by any of the following:

a. Proximity to the attack zone.

b. Number of patients from the attack zone served by the applicant.

c. Provision of specialized services to patients from the attack zone by the applicant.

Program Contact Person: Mr. Eulas Dortch , Director, Division of Facilities Compliance and Recovery, HRSA Office of Special Programs, Room 10C–16, 5600 Fishers Lane, Rockville, MD 20857, 301 443–8007 (phone), 301 443–0619 (fax), *edortch@hrsa.gov* (e-mail).

Dated: March 26, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–7739 Filed 3–28–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0054]

Agency Information Collection Activities; Proposed Collection; Comment Request; Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of February 28, 2002 (67 FR 9297). The document announced an opportunity for public comment on the proposed collection of certain information by the agency; specifically, comments on requirements relating to the approval and labeling of color additives.

FOR FURTHER INFORMATION CONTACT: Doris Tucker, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–4859, appearing on page 9297 in the **Federal Register** of Thursday, February 28, 2002, the following correction is made:

1. On page 9297, in the third column, under **SUPPLEMENTARY INFORMATION**, the OMB control number ''0910–01850'' is corrected to read ''0910–0185''.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7525 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0104]

Agency Information Collection Activities; Proposed Collection; Comment Request; Consumer Handling of Ready-to-Eat Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection that will occur during research to determine how consumers handle ready-to-eat (RTE) food products and how consumer practices impact the microbiological safety of RTE foods.

DATES: Submit written or electronic comments on the collection of information by May 28, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Consumer Handling of Ready-to-Eat Foods

Section 402 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342) authorizes FDA to regulate foods so that they are not adulterated. FDA's research in food safety seeks to reduce the incidence of foodborne illness by improving the ability to find new ways to detect, enumerate, and control pathogens in the food supply. FDA's Center for Food Safety and Applied Nutrition (CFSAN) awarded two grants of research funds in September 2001 to support research into consumer refrigeration practices and shelf-life for RTE foods entitled ''Consumer Storage Length Practices for Ready-to-Eat Foods'' and ''Consumer Handling of Ready-to-Eat Foods After Purchase.''

The information that will be collected concerns consumer handling of RTE food products. The research will provide data on the storage of RTE foods in unopened and opened packages in home refrigerators; consumer understanding of expiration dates; and consumer use of this information in making decisions regarding purchases, consumption, and home storage conditions. The data from these surveys will be used to refine the Department of Health and Human Services and United States Department of Agriculture *Listeria monocytogenes* (LM) risk assessment, issued in draft for public comment on January 19, 2001 (66 FR 5515). The values used for home storage of foods in the draft LM risk assessment were largely based on expert opinion, not statistically supportable data. Thus, the consumer storage data from these two grants will improve FDA's confidence in the predicted risks by reducing the uncertainty in consumer practices.

For the ''Consumer Storage Length Practices for Ready-to-Eat Foods,'' approximately 2,400 respondents will be selected from an already existing nationally representative web-enabled panel. For ''Consumer Handling of Ready-to-Eat Foods After Purchase,'' a more traditional survey approach will be used and will be conducted in three parts. In part 1, approximately 400 in-person interviews will be conducted in Tennessee, Illinois, Kansas, Missouri, Florida, and New York. Participants will

be selected to represent both sexes, different income groups and education levels, and a wide range of adults from different ethnic groups. In part 2, 100 respondents from part 1 will complete food diaries of specific foods from the day the food dairy is initiated until those foods are consumed or discarded. In part 3, two mass mailings of questionnaires will be conducted one in fall-winter and the second in spring-summer for a total of 2,000 respondents.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Web-enabled panel survey	2,400	1	2,400	0.25	600
Interview survey	400	1	400	0.5	200
Food diary	100	1	100	0.5	50
Mail survey	2,000	1	2,000	0.3	600
Total					1,450

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents given in table 1 is based on the study design in the two grant applications. The hours per response was estimated based on experience of the grantees for similar surveys and also on the number of questions to be included in each survey instrument.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7580 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0301]

Agency Information Collection Activities; Announcement of OMB Approval; Customer/Partner Service Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Customer/Partner Service Surveys'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Inthe **Federal Register** of December 20, 2001 (66 FR 65723), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0360. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7524 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0402]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 2002 (67 FR 1770), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0378. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7526 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Manufacturing Inspections; Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

The Food and Drug Administration (FDA) is announcing a series of workshops to discuss the application of a systems-based approach to drug manufacturing inspections. The workshops, which will be held in collaboration with the Consumer Healthcare Products Association (CHPA), are intended to provide a regulatory perspective on the systems-based approach to inspections.

Date and Time: See table 1 following the ''Location'' section of this document.

Location: See table 1 below

TABLE1

Meeting Address	Date and Local Time	FDA Contact Person
NEW JERSEY: Sheraton Meadowlands Hotel, 2 Meadowlands Plaza, East Rutherford, NJ, 201–896–0500.	Monday, June 17, 2002, from 8:30 a.m. to 4:30 p.m.	Erik N. Henrikson
PUERTO RICO: San Juan Marriott Hotel, 1309 Ashford Ave., San Juan, PR, 800–981–8546.	Monday, July 15, 2002, from 8:30 a.m. to 4:30 p.m.	Do.
CALIFORNIA: Manhattan Beach Marriott Hotel, 1400 Parkview Dr., Manhattan Beach, CA, 310–546–7511.	Monday, August 5, 2002, from 8:30 a.m. to 4:30 p.m.	Do.

Contact:

For information regarding participation by FDA: Erik N. Henrikson, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–827–0072, FAX 301–594–2202.

For information regarding the program or registration: Bill Bradley, Consumer Healthcare Products Association (CHPA), 1150 Connecticut Ave. NW., Washington, DC 20036, 202–429–9260, FAX 202–223–6835.

Registration: Anyone interested in the workshops can obtain registration information from Bill Bradley, CHPA (address above), or a brochure with the program and registration form is available at http://www.chpa-info.org/meetings/pdfs/2002workshops_updated_22602.pdf. This material is also available from http://www.fda.gov.cder/calendar. Space is limited. Please preregister by the Friday prior to each of these meetings to confirm your participation. If you need special accommodations due to a disability, please contact Erik N. Henrikson (address above) at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

Who Should Attend? This announcement is directed toward professionals involved in the manufacture, control, and regulation of prescription or over-the-counter drugs who will benefit from these workshops, including: Process/production engineers, quality assurance/quality control and regulatory affairs professionals, auditors, repackers and relabelers, consultants, regulatory investigators and good manufacturing practice compliance officials, and reviewing chemists. Other entities or individuals may also be interested in attending.

Is There a Registration Fee for This Workshop? Yes, a registration fee of $320.00 payable to CHPA is required for this workshop. This registration fee includes workshop reference materials and lunch on each day. Government employees qualify for a discounted rate of $75.00.

How Can I Get Additional Information, Including Copies of This Document or Other Related Documents? The notice of participation form, information about the workshops, and other related documents are available from the information contacts (addresses above) or on the Internet at http://www.fda.gov.cder/calender.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7579 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA Food Labeling and Allergen Declaration; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs Southwest Regional Small Business Program (Small Business Program), in collaboration with FDA's Center for Food Safety and Applied Nutrition and the Mid-Continental Association of Food and Drug Officials is announcing a public workshop entitled ''FDA Food Labeling and Allergen Declaration.'' This public workshop is intended to provide information about FDA food labeling regulations, allergen declaration and other related matters to the regulated industry, particularly small businesses and startups.

Date and Time: The public workshop will be held on August 14 and 15, 2002, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Center for Community Cooperation, Oak Corner Room, 2900 Live Oak St., Dallas, TX 75204.

Contact: David Arvelo or Sue Thomason, Southwest Regional Office (HFR–SW16), Food and Drug Administration, 7920 Elmbrook Dr., suite 102, Dallas, TX 75247, 214–655–8100, ext. 130 or 128, FAX 214–655–8114, or e-mail: oraswrsbr@ora.fda.gov.

Registration: Pre-registration by July 31, 2002, is encouraged. The Mid-Continental Association of Food and Drug Officials has a $25 pre-registration fee to cover the cost of breaks. To pre-register, please complete the form below and send along with a check or money order for $25 payable to the Mid-Continental Association of Food and Drug Officials, 7920 Elmbrook Dr., suite 102, Dallas, TX 75247. As an alternative, the registration form can also be obtained on the Internet at http://www.fda.gov/ora/indust_assit/Default.htm. Directions to the facility are available at the Center for Community Cooperation Web site at http://www.cccdfw.org/pages/location.html. Seats are limited, please submit the registration form as soon as possible. Space will be filled in order of receipt of registration. Those accepted into the public workshop will receive written confirmation. Registration will close after the workshop is filled. Onsite registration will be done on a space-available basis on the day of the public workshop beginning at 8 a.m. The cost of onsite registration is $35 payable to the Mid-Continental Association of Food and Drug Officials. If you need special accommodations due to a disability, please contact David Arvelo or Sue Thomason at least 7 days in advance.

The following information is requested for registration:

Name: _____

Agency: _____

Mailing address: _____

_____

City: _____ State:_____

Zip code: _____

Phone: ( ) _____

FAX: ( ) _____

E-mail: _____

SUPPLEMENTARY INFORMATION: The workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers

and startups originating from the Dallas District area. The Small Business Program presents this workshop to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the Small Business Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by government agencies to small businesses.

The goal of the workshop is to present information that will enable manufacturers and regulated industry to better comply with labeling requirements, especially in light of growing concerns about food allergens. Information presented will be based on agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Mandatory label elements, (2) nutrition labeling, (3) claims, (4) allergen policy, and (5) labeling of special cases. FDA expects that participation in this workshop will provide regulated industry with greater understanding of the regulatory and policy perspectives on food labeling and allergen declaration.

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Workshop handouts may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

Dated: March 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7583 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0314]

"Guidance for Industry: Providing Regulatory Submissions to CBER in Electronic Format—Investigational New Drug Applications (INDs);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Providing Regulatory Submissions to CBER in Electronic Format—Investigational New Drug Applications (INDs)" dated March 2002. The document is intended to provide guidance to sponsors on the design, development, organization, and submission in electronic format of an IND to the Center for Biologics Evaluation and Research (CBER). This guidance finalizes the draft guidance that was announced in the **Federal Register** on June 1, 1998 (63 FR 29741).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Providing Regulatory Submissions to CBER in Electronic Format—Investigational New Drug Applications (INDs)" dated March 2002. The agency has developed this guidance to assist sponsors on the design, development, organization, and submission in electronic format of INDs to CBER. The guidance announced in this notice finalizes the draft "Guidance for Industry: Pilot Program for Electronic Investigational New Drug (eIND) Applications for Biological Products" dated May 1998 (63 FR 29741, June 1, 1998).

This document reflects CBER's experience with the electronic IND pilot program and incorporates knowledge gained from development of the electronic marketing applications guidance document entitled "Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format—Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA)/Establishment License Application (ELA) and New Drug Applications (NDA)]" November 12, 1999 (64 FR 61647), revised. The agency also incorporated suggestions and recommendations from sponsors in developing a table of contents driven navigational system. However, this guidance does not address the scientific, clinical, and regulatory requirements for preparing an IND submission. These requirements can be found in title 21 of the Code of Federal Regulations, part 312 (21 CFR part 312). Part 312 must be followed in the preparation of any IND.

FDA currently is working on electronic submissions in the Common Technical Document (CTD) format developed by the International Conference on Harmonization (ICH). As FDA develops guidance on electronic CTD submissions, CBER intends to harmonize this guidance with the CTD guidance. This guidance describes how sponsors may submit electronic INDs to CBER. Sponsors may continue to submit INDs in paper form.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement

of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: March 13, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7581 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0103]

Draft Revised Compliance Policy Guide; Male Condom Defects; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revised compliance policy guide (CPG) entitled ''Male Condom Defects (CPG 7124.21).'' This draft CPG provides guidance concerning FDA's water leak testing and air burst testing of male condoms. This draft guidance is being issued for public comment only and will not be implemented until a final CPG is announced in the **Federal Register**.

DATES: Submit written or electronic comments on the draft by June 27, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft CPG, current CPG, and Laboratory Information Bulletin (LIB) No. 4176 to the Division of Small Manufacturers, International and Consumer Assistance (DSMICA), Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850 (301–443–6597 or outside MD 1–800–638–2041). Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft CPG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to these documents.

FOR FURTHER INFORMATION CONTACT: John J. Farnham, Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4618, ext. 117.

SUPPLEMENTARY INFORMATION:

I. Background

The draft CPG entitled ''Male Condom Defects (CGP 7124.21)'' is revising CPG 7124.21 that is currently entitled ''Condoms; Defects—Criteria for Direct Reference Seizure.'' The title of this CPG was changed in the draft document; however, the CPG number remains the same.

The purpose of this draft CPG is to provide guidance to FDA personnel concerning FDA's water leak testing of both latex and synthetic male condoms as well as air burst testing of latex male condoms.

In accordance with section 514(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d(c)), as amended by the FDA Modernization Act of 1997, the agency now recognizes some voluntary industrial standards for purposes of meeting the act's requirements. For latex male condoms, FDA has recognized, in part, two standards: (1) American Society for Testing and Materials' Standard Specification for Rubber Contraceptives (Male Condoms)–ASTM D3492–97 and (2) International Organization for Standardization's Rubber Condoms Standard–ISO 4074–1.

Several important changes were included in this draft revised CPG to conform to these two standards. For water leak testing, the acceptable quality level was lowered from 0.4 to 0.25 in conformance with the two referenced standards. Regulatory guidance and sampling plans were included for FDA's air burst testing for the first time. FDA is concerned about the ability of latex condoms to resist breakage and has implemented air burst testing as a measure of elasticity and strength. A ''lot'' definition for FDA sampling and more specific guidance on sampling and analyses were also added to the revised draft CPG.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on male condom defect regulatory guidance and test and sampling methods. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations. In accordance with FDA's good guidance practices (21 CFR 10.115), this draft CPG is considered level 1 guidance. This draft guidance document is being issued for public comment only and is not in effect at this time. Only after a notice of availability is published in the **Federal Register** for the final CPG will the agency implement the revised policy.

III. Electronic Access

Copies of the draft CPG and current CPG may be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs' home page includes these documents and may be accessed at http://www.fda.gov/ora. The referenced documents will be available on the Compliance References page.

Facsimiles of the draft CPG, current CPG, and LIB 4176 are available from DSMICA. To receive the referenced documents on your FAX machine, call the CDRH Facts-On-Demand (FOD) system at 1–800–899–0381 or 301–827–0111 from a touch tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document numbers 39 (current CPG), 1399 (draft CPG) and 1400 (LIB 4176) followed by the pound sign (#). Follow the remaining voice prompts to complete the request.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on this draft CPG by June 27, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The agency will review all comments, but in issuing a final CPG, need not specifically address each comment. If appropriate, the agency will make changes to the CPG in response to comments. Copies of the draft CPG,

current CPG, LIB 4176, and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 21, 2002.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 02–7582 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463), announcement is made of the following National Advisory Committee scheduled to meet during the month of April 2002.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: April 29, 2002; 8:00 a.m.—5:00 p.m., April 30, 2002; 8:00 a.m.—4:00 p.m.

Place: The Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

Agenda items will include, but not be limited to: Welcome; plenary discussion of interdisciplinary demonstration projects and promotion of interdisciplinary teams; workforce issues linked to regional and local need; collaboration with institutions that train minority and immigrant health care professionals in rural and inner city areas; presentations by speakers representing: the Bureau of Health Professions (BHPr), Health Resources and Services Administration; Committee members; the Division of State, Community and Public Health, BHPr; and BHPr staff supporting Committee activities. Meeting content will be based on the Committee's charge under section 756 of the Public Health Service Act, to include discussion and outline of the 2002 Committee report and scheduling of topics for the next Committee meeting in June 2002.

Public comment will be permitted before lunch and at the end of the Committee meeting on April 30, 2002. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Mrs. Tempie R. Desai, Principal Staff Liaison, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0132.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but wish to make an oral statement may register to do so at the Doubletree Hotel, Rockville, Maryland, on April 29, 2002. These persons will be allocated time as the Committee meeting agenda permits.

Anyone requiring information regarding the Committee should contact Mrs. Desai, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0132.

Proposed agenda items are subject to change as priorities dictate.

Dated: March 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–7584 Filed 3–28–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 2002:

Name: National Advisory Council on Migrant Health.

Date and Time: May 1, 2002; 9 a.m. to 5 p.m.; May 2, 2002; 9 a.m. to 5 p.m.

Place: Hyatt Regency Indianapolis, 1 South Capitol Avenue, Indianapolis, Indiana. Phone: (317)632–1234; Fax (317)616–6299.

The meeting is open to the public.

Agenda: The agenda includes an overview of general Council business activities and priorities. Topics to be addressed will include dissemination of the Migrant Health Issues Monograph Series and finalizing the 2002 Recommendations and background statements. In addition, the Council will be discussing workforce needs in the expansion of migrant health centers. Finally, the Council will attend the National Association of Community Health Centers' 2002 National Farmworker Health Conference, which is also being held in Indianapolis at this time.

Agenda items are subject to change as priorities indicate.

Contact: Anyone requiring information regarding the subject Council should contact Margaret Davis, staff support to the National Advisory Council on Migrant Health, Migrant Health Program, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–0291.

Dated: March 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–7585 Filed 3–28–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2002

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)) and section 601 of the Indian Health Care Improvement Act (25 U.S.C. 1601), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2002 for Medicare and Medicaid Beneficiaries and Beneficiaries of other Federal Agencies. Since the inpatient rates set forth below do not include physician services, IHS facilities may also be entitled to bill State Medicaid programs for physician services to the extent that those services meet applicable requirements under an approved State Medicaid plan.

	Calendar year 2002
Inpatient Hospital Per Diem Rate (Excludes Physician Services)	
Lower 48 States	$1,507
Alaska	1,967
Outpatient Per Visit Rate (Excluding Medicare)	
Lower 48 States	$197
Alaska	374
Outpatient Per Visit Rate (Medicare)	
Lower 48 States	$160
Alaska	364
Medicare Part B Inpatient Ancillary Per Diem Rate	
Lower 48 States	$287

	Calendar year 2002
Alaska	687
Outpatient Surgery Rate (Medicare)	
Established Medicare rates for freestanding Ambulatory Surgery Centers.	

Effective Date for Calendar Year 2002 Rates

Consistent with previous annual rate revisions, the Calendar Year 2002 rates will be effective for services provided on/or after January 1, 2002 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Regulatory Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all cost and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is not a major rule because we have determined that the economic impact will be negligible.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This rule will not have a significant economic effect on these governments or the private sector.

The Department has determined that this notice does not have a substantial effect on States or local governments under Executive Order 13132 and will not interfere with the roles, rights and responsibilities of States or local governments.

We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the provisions of Executive Order l2866, this notice was reviewed by the Office of Management and Budget.

Dated: January 28, 2002.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. 02–7723 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Title 181.

Date: April 18–19, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397; Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control National Institutes of Health, HSS)

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7615 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: April 10, 2002..

Time: 10 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheryl K. Brining, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Center, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, 301–435–0809, *brinings@ncrr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7621 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, March 26, 2002, 8:30 AM to March 26, 2002, 5 PM, Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on February 22, 2002, 67 FR 8277.

The meeting will be held on April 3, 2002, Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland. The time of the meeting remains the same. The meeting is closed to the public.

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7613 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Equipment Supplements.

Date: April 15–16, 2002.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7616 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Services; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 9–10, 2002.

Closed: May 9, 2002, 8:30 AM to 10:30 AM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: May 9, 2002, 10:30 AM to 5:00 PM.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of Council.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: May 10, 2002, 8:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Norka Ruiz Bravo, Phd, Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 594–4499.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-governmental employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: pub.nigms.nih.gov/council/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7617 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance to space available. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 21–22, 2002.

Closed: May 21, 2002, 3 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Bldg. 31, C-Wing, Conference Room 6, Bethesda, MD 20892.

Open: May 22, 2002, 8 AM to 1:15 PM.

Agenda: Call to Order; Geriatrics Program Review Report; Task Force on Minority Aging Research Report; Working Group on Program and Clinical Investigators Working Group Reports.

Place: National Institutes of Health, 9000 Rockville Pike, Bldg. 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7618 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: May 15, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7619 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–65, Review of R44 Grants.

Date: April 23, 2002.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–50, Review of R01 Grants.

Date: April 25, 2002.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna Sandberg MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–62, Review of R44 Grants.

Date: April 30, 2002.

Time: 10 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN-44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121 Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7620 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: May 30, 2002.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601. 301–435–3732.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7622 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Global Impact of Respiratory RNA Viruses on Cellular Pathways.

Date: April 16, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700-B Rockledge Drive, Room 2103, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700-B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. (301) 496–2550. *ar15o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7623 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Review of Clinical Trials.

Date: April 10, 2002.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 750, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798. *muston@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK01–026; Functional Atlas of Orphan Nuclear Receptors.

Date: April 23, 2002.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892. (301) 594–8898.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Growth Hormone.

Date: April 30, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Suite 755, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carolyn Miles, PhD, Scientific Research Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. P01 Group 1. Development and Cell Biology of Epithelium.

Date: May 1, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites Bethesda, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition

Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7624 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2002.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608. 301–443–1606. *Mcary@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 29, 2002.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608. 301–443–1606.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7625 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 7–8, 2002.

Time: 7:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 10, 2002.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard By Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203.

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892. (301) 594–8886.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 15, 2002.

Time: 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 746, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 746, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892. 301–594–7637. *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7626 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren G. Magnuson Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, March 22, 2002 9 AM to March 22, 2002 1 PM, National Institutes of Health, Clinical Center, Medical Board Room 2C116, 9000 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on March 7, 2002, 67 FR 10429.

The meeting will be closed from 10:30 AM to 1 PM to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of the information and the discussions would be likely to significantly frustrate implementation of any proposed agency action.

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7614 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–09]

Notice of Proposed Information Collection: Comment Request; Informed Consumer Choice Disclosure Notice

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* May 28, 2002.

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.

This Notice also lists the following information:

Title of Proposal: Informed Consumer Choice Disclosure Notice.

OMB Control Number, if applicable: 2502–0537.

Description of the need for the information and proposed rule: Under section 225(a) of the Departments of Veterans Affairs and Housing and Urban Development, and the Independent Agencies Appropriations Act of 1999, amended section 203(b)(2) to the National Housing Act states that lenders are required to disclose certain information to a prospective borrower who seeks a FHA-insured home mortgage. The lender is required to provide the borrower with a comparison of costs—the costs for the FHA-insured mortgage compared to the costs for other similar conventional mortgage products the lender provides and for which the borrower is qualified. The disclosure notice should also provide information about when the borrower's requirements to pay FHA mortgage insurance premiums would terminate.

Agency form number, if applicable: None.

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 hours needed to prepare the information collection is 4,500, the number of respondents is estimated to be 9,000 generating approximately 9,000 responses annually, the response is on occasion, and the amount of time needed per response is approximately 30 minutes.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 21, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–7546 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4740–N–02]

Notice of Proposed Information Collection: Comment Request Quarterly Loan Level Reporting

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), 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:* May 28, 2002.

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:

Sonya Suarez, Office of Program Operations, Department of Housing & Urban Development, 451—7th Street, SW., Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit 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).

The 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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the 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 through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Quarterly Loan Level Reporting.

OMB Control Number, if applicable: 2503–0026.

Description of the need for the information and proposed use: Ginnie Mae requires that issuers submit loan level data quarterly for all pools and loan packages. The loans are reported in association with the pools or loan packages of which they are a part. The data is analyzed and reconciled against pool information submitted by issuers. Ginnie Mae needs to collect loan level data from its issuers to continue performing risk analyses, compliance monitoring and cost analyses regarding its Mortgage-Backed Securities programs.

Agency form numbers, if applicable: Not applicable.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Number of respondents: 296 (as of November 2001).
Frequency of responses: 1 per quarter.
Total annual responses: 1,184.
Hours per response: 4.
Total burden hours: 4,736.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 21, 2002.

Ronald A. Rosenfeld,

President, Ginnie Mae.

[FR Doc. 02–7547 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–12]

Notice of Submission of Proposed Information Collection to OMB FHA Fee Inspector Panel Application Package

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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:* April 29, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: FHA Fee Inspector Panel Application Packages.

OMB Approval Number: 2502–XXXX.

Form Numbers: HUD–92563.

Description of the Need for the Information and its Proposed Use: FHA approved inspectors are used by participating mortgage lenders to assess the quality of the construction of homes before the homes can be accepted as security for FHA insured loans.

Respondents: Business or other for-profit, Federal Government.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
3,000		3		0.58		5,250

Total Estimated Burden Hours: 5,250.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 21, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–7545 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–13]

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.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 21, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–7247 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of 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–053207

Applicant: Accipiter Biological Consultants, Portal, Arizona.

Applicant requests permit for recovery purposes to conduct presence/absence surveys for the northern aplomado falcon (*Falco femoralis septentrionalis*) within Cameron County, Texas.

Permit No. TE–053104

Applicant: Athabasca Consulting, Inc., Austin, Texas.

Applicant requests permit for recovery purposes to conduct presence/absence surveys within Texas for the following species: black-capped vireo (*Vireo atricapillus*), golden-cheeked warbler (*Dendroica chrysoparia*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Tooth Cave spider (*Neoleptoneta myopica*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Madla's Cave meshweaver (*Cicurina madla*), Robber Baron Cave meshweaver (*Cicurina baronia*), Bracken Bat Cave meshweaver (*Cicurina venii*), Government Canyon Cave meshweaver (*Cicurina vespera*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Cokendolpher Cave harvestman (*Texella cokendolpheri*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Coffin Cave mold beetle (*Batrisodes texanus*), ground beetle (*Rhadine exilis*), ground beetle (*Rhadine infernalis*), Helotes Mold beetle (*Batrisodes venyivi*), Texas blind salamander (*Typhlomolge rathbuni*), Barton Springs salamander (*Eurycea sosorum*), Houston toad (*Bufo houstonensis*) and Fountain darter (*Etheostoma fonticola*).

Permit No. TE–053085

Applicant: U.S. Bureau of Reclamation, Boulder City, Nevada.

Applicant requests permit for recovery purposes to conduct presence/absence surveys for the Yuma clapper rail (*Rallus longirostris yumanensis*) within Mohave County, Arizona and San Bernardino County, California. In addition, applicant requests permit for recovery purposes to conduct presence/absence surveys and nest monitoring for the southwestern willow flycatcher (*Empidonax traillii extimus*) within La Paz and Clark Counties, Nevada and Mohave and Yuma Counties, Arizona.

Permit No. TE–043399

Applicant: Eagle Environmental Consulting, Owasso, Oklahoma.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the interior least tern (*Sterna antillarum*) within Oklahoma.

Permit No. TE–841353

Applicant: Loomis Austin, Inc., Austin, Texas.

Applicant requests amendment to an existing permit to allow presence/absence surveys within Texas for the following species: interior least tern (*Sterna antillarum*), ocelot (*Leopardus pardalis*) and jaguarundi (*Herpailurus yagouaroundi*).

Permit No. TE–053083

Applicant: Julie Kutz, Albuquerque, New Mexico.

Applicant requests a permit for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

Permit No. TE–053084

Applicant: Derek Green, Austin, Texas.

Applicant requests a permit for recovery purposes to conduct presence/absence surveys within Texas for the following species: golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapillus*), interior least tern (*Sterna antillarum*), red-cockaded woodpecker (*Picoides borealis*), Houston toad (*Bufo houstonensis*), ground beetle (*Rhadine exilis*), ground beetle (*Rhadine infernalis*), Helotes mold beetle (*Batrisodes venyivi*), Cokendolpher Cave harvestman (*Texella cokendolpheri*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla's Cave meshweaver (*Cicurina madla*), Bracken Bat Cave meshweaver (*Cicurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Tooth Cave spider (*Neoleptoneta myopica*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Coffin Cave mold beetle (*Batrisodes texanus*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), northern aplomado falcon (*Falco femoralis septentrionalis*), brown pelican (*Pelecanus occidentalis*) and southwestern willow flycatcher (*Empidonax traillii extimus*).

Permit No. TE–053080

Applicant: Gary Garrett, Ingram, Texas.

Applicant requests permit for recovery purposes to conduct monitoring surveys for the Comanche Springs pupfish (*Cyprinodon elegans*) and Pecos gambusia (*Gambusia nobilis*) within Texas.

Permit No. TE–053109

Applicant: Sally Stefferud, Phoenix, Arizona.

Applicant requests permit for recovery purposes to conduct monitoring surveys for the Gila topminnow (*Poeciliopsis occidentalis*) and desert pupfish (*Cyprinodon macularius*) within Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Pima, Pinal, Santa Cruz and Yavapai Counties of Arizona. Additional activities may include temporary holding and marking in conjunction with authorized recovery projects.

Permit No. TE–025131

Applicant: Dr. Lawrence E. Stevens, Flagstaff, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona.

Permit No. TE–053082

Applicant: U.S.G.S Biological Resources Division, Arizona Cooperative Fish and Wildlife Research Unit, Tucson, Arizona.

Applicant requests permit for research and recovery purposes to conduct presence/absence surveys by electrofishing, capturing and handling the Colorado pikeminnow (*Ptychocheilus lucius*) and razorback sucker (*Xyrauchen texanus*) within central Arizona.

Permit No. TE–052634

Applicant: New Mexico Environmental Department/Surface Water Quality Bureau, Santa Fe, New Mexico.

Applicant requests permit for research and recovery purposes to conduct presence/absence surveys by electrofishing, capturing, handling and collecting voucher specimens within New Mexico for the following species: Pecos gambusia (*Gambusia nobilis*), Rio Grande silvery minnow (*Hybognathus amarus*), Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis occidentalis*) and Gila trout (*Oncorhynchus gilae*).

Permit No. TE–053843

Applicant: Donna Achuff, Orange Grove, Texas.

Applicant requests permit for educational purposes, to house and/or care for captive bred jaguar (*Panthera onca*) and ocelot (*Leopardus (=Felis) pardalis*) within Jim Wells County, Texas for educational purposes.

Permit No. TE–053839

Applicant: Sugnet Environmental, Inc., Durango, Colorado.

Applicant requests permit for research and recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, Colorado, New Mexico and Utah.

Permit No. TE–800611

Applicant: SWCA, Inc., Austin, Texas.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the ocelot (*Leopardus (=Felis) pardalis*) and jaguarundi (*Herpailurus (=Felis) yagouaroundi*) within Texas.

Permit No. TE–839503

Applicant: Entranco, Inc., Phoenix, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the Sonoran pronghorn (*Antilocapra americana sonoriensis*) and brown pelican (*Pelecanus occidentalis*) within Arizona, New Mexico, and Texas.

[PERMIT NO. TE–820085]

Applicant: The Nature Conservancy of Texas, San Antonio, Texas. Applicant requests an amendment to an existing permit to allow tracking, surveys, monitoring, and collection of dead specimens for the Attwater's prairie-chicken (*Tympanuchus cupido attwateri*) within Texas. In addition, applicant requests an amendment to allow presence/absence surveys for the interior least tern (*Sterna antillarum*).

[PERMIT NO. TE–038608]

Applicant: USGS BRD Sonoran Desert Field Station, SRNR, Tucson, Arizona. Applicant requests an amendment to an existing permit for research and recovery purposes to conduct presence/absence surveys by electrofishing, seining and dip-netting for Gila topminnow (*Poeciliopsis occidentalis occidentalis*) within Arizona.

[PERMIT NO. TE–053736]

Applicant: Barbara Garrison, Chandler, Arizona. Applicant requests permit for research and recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) and cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) within Arizona.

DATES: Written comments on these permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 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: Chief, Endangered Species Division, Albuquerque, New Mexico, at the above address. 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 30 days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 02–7576 Filed 3–28–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plan, Draft Supplemental Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway, Wyoming and Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Draft Supplemental Environmental Impact Statement for the Winter Use Plan for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway.

SUMMARY: Pursuant to section 102(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of Draft Supplemental Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway, Wyoming and Montana. The purpose for preparing the Plan/SEIS is to further the purposes of NEPA by soliciting more public comment and to consider additional information on new snowmobile technology not available at the time of the earlier decision. It analyzes 4 winter use management alternatives for the parks and evaluates the environmental consequences of the alternatives on wildlife, air quality, natural quiet, socioeconomics, and visitor experience.

Under alternative 1a-No Action, use and management practices in the parks and Parkway as decided by the November 22, 2000 record of decision for the Winter Use Plan, Final Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway would continue. The decision eliminated recreational snowmobile and snowplane use from the parks and Parkway by the winter of 2003–2004. Oversnow motorized access would be provided by means of mass transit snowcoaches. Alternative 1b is essentially the same as alternative 1a with the exception that an additional year would be allowed for the phasing

in of snowcoach only travel. Alternative 2 allows for the use of snowmobiles provided that EPA's proposed 2010 emission standards are met and sound levels do not exceed 78 decibels for publicly owned machines. It calls for a daily cap on numbers of snowmobiles and for increased NPS management of winter use. Alternative 3 provides for guided use of snowmobiles provided that best available technology standards for both emissions and noise levels are met for all machines. All alternatives emphasize an adaptive management strategy under which the number of snowmobiles allowed in the parks may be adjusted based on the results of monitoring and carrying capacity studies.

DATES: The NPS will accept comments on the DSEIS for 60 days beginning March 29, 2002. No public meetings are scheduled at this time.

ADDRESSES: Information will be available for public review and comment in the offices of the Superintendents and on the internet at *www.nps.gov/grte/winteruse/intro.htm.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Grand Teton National Park, (307) 739–3410.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Planning Office, Grand Teton National Park, PO Box 352, Moose, WY 83012. You may also comment via email to *grte_winter_use_seis@nps.gov.* Finally, you may hand-deliver comments to Grand Teton National Park, Moose, WY. We will not consider comments that do not include the name and mailing address of the submitter(s). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 13, 2002.

R. Everhart,

Director, Intermountain Region, National Park Service.

[FR Doc. 02–7627 Filed 3–28–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations 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 March, 2002.

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 sub-division thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division 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–39,789; Guildford of Maine, Guilford, ME

TA–W–40,001 & A; Crowe Rope Industries, Searsmont, ME and Winslow, ME

TA–W–40,218 & A; DMI Furniture, Inc., Louisville, KY and Huntingburg, IN

TA–W–41,051; West Point Foundry and Machine Co., West Point, GA

TA–W–40,200; International Paper, Wood Products Div., Washington, GA

TA–W–40,414; Catawissa Lumber and Specialty Co., Inc., West Jefferson, NC

TA–W–40,912; Kennametal Industrial Product Group, A Subsidiary of Kennametal, Inc., Pine Bluff, AR

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,021; Kryptonite Corp., A Subsidiary of Ingersoll-Rand Co, Canton, MA

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–41,021; Steel Valley Crane Service, Inc., Canfield, OH

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–40,020; Continental Fabrics, Inc., Angier, NC: August 29, 2000.

TA–W–39,807; Water Wonders, Inc., Santa Maria, CA: April 25, 2000.

TA–W–39,684; Lee Fashion Fabrics, Inc., Gloversville, NY: July 7, 2000.

TA–W–38,914; Bloomsburg Mills, Inc., Bloomsburg Plant, Bloomsburg, PA: March 15, 2000.

TA–W–40,101; Lee Dyeing Company of North Carolina, Gloversville, NY: August 24, 2000.

TA–W–40,504; LTV Steel Crop., Including Chicago Coke Plant, East Chicago, IN: December 19, 2000.

TA–W–40,538; JMC, LLC, d/b/a Nexpak, Rockaway, NJ: December 19, 2000.

TA–W–40,634; LTV Steel Corp., Hennepin, IL: December 18, 2000.

TA–W–40,635; LTV Steel Corp., Warren Coke Plant, Warren, OH: December 28, 2000.

TA–W–40,686; Autodie International, Inc., Grand Rapids, MI: December 28, 2000.

TA–W–40,724; LTV Steel Corp., Technology Center, Independence, OH: January 4, 2001.

TA–W–40,744; Wabash Aluminum Alloys LLC, Bellwood Plant, Richmond, VA: December 13, 2000.

TA–W–40,766; Harper-Wyman Co, Princeton, IL: December 5, 2000.

TA–W–40,776; Perkinelmer Life Sciences, Inc., Beltsville, MD: January 7, 2001.

TA–W–40,786 & A, B; LTV Steel Corp., Cuyahoga Valley Railway Co., LTV Railroad Companies, Cleveland, OH, River Terminal Railway Co., LTV Railroad Companies, Cleveland, OH and Chicago Short Line Railway Company, LTV Railroad Companies, Cleveland, OH: January 14, 2001.

TA–W–40,817 & A; Northshore Mining Co., Silver Bay, MN and Babbitt, MN: December 19, 2000.

TA–W–40,818; Agfa Corp., Brevard, NC: March 23, 2002.

TA–W–40,828; Citizens Gas and Coke Utility, Indianapolis Coke, Indianapolis, IN: January 21, 2001.

TA–W–40,921; Gulf Fibers, Inc., Axis, AL: January 16, 2001.
TA–W–40,982; Volk Packaging Corp., Biddeford, ME: January 31, 2001.
TA–W–41,017; Mason Shoe Manufacturing Co., Chippewa Falls, WI: February 17, 2001.
TA–W–41,030; LTV Steel Corp., Lorain Pellet Terminal, Lorain, OH: February 8, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. 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 March, 2002.

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 imports 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–05372; International Paper, Wood Products Division, Washington, GA.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05909; Volk Packaging, Biddeford, ME: January 31, 2001.
NAFTA–TAA–05753; Salem Oil & Grease Co., Salem, MA: January 14, 2001.
NAFTA–TAA–05648; Harper-Wyman Co., Princeton, IL: December 5, 2000.
NAFTA–TAA–5364; Continental Fabrics, Inc., Angier, NC: August 29, 2000.
NAFTA–TAA–04663; Bloomsburg Mills, Inc., Bloomsburg Plant, Bloomsburg, PA: March 15, 2000.
NAFTA–TAA–05871; Osram Sylvania, General Lighting, Winchester, KY: February 11, 2001.
NAFTA–TAA–05907 & A; Lee Fashion Fabrics, Inc., Gloversville, NY and Lee Dyeing Co. of North Carolina, Gloversville, NY: July 7, 2000.

I hereby certify that the aforementioned determinations were issued during the month of March, 2002. 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: March 25, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–7595 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

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 March, 2002.

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 or subdivision have decreased absolutely, and

(3) that increases of imports or 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 Determination 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–39,718; J and R Patterns, Inc., Fall River, MA
TA–W–40,572; Northeast Bleach and Dye, Inc., Schuylkill Haven, NY
TA–W–39,942; Recycled Offices, Inc., Sanford, NC
TA–W–40,303; Precision Tool and Design, Inc., Erie, PA
TA–W–39,517; Spectrum Control, Inc., Erie, PA
TA–W–40,632; Corning, Inc., Fall River Corning, NY
TA–W–40,777; New Textile Parts Co LTD, Gastonia, NC
TA–W–40,800; Ohio Magnetics, Inc., A Subsidiary of Peerless Winsmith, Inc., Maple Heights, OH
TA–W–49,948; ARW Mayville LLC, Mayville, WI
TA–W–39,958; Akzo Nobel Functional Chemicals, LLC, A Division of Akzo Nobel, Inc., Gallipolis Ferry, WV
TA–W–40,858; National Oilwell, McAlester, OK
TA–W–39,310; Gen Systems, Stamco Div., New Bremen, OH
TA–W–40,502; & A; Midcom, Inc., Huron, SD and Waterstown, SD
TA–W–40,613; Celestrica-Wisconsin, A Div. of Celestrica Corp., Chippewa Falls, WI
TA–W–40,589; Agere Systems, Optoelectronics Div., Breinigsville, PA and Reading, PA
TA–W–40,860; Inovec, Inc., Eugene, OR
TA–W–40,805; Valeo Climate Control, Decatur, IL
TA–W–40,403; Gen Corp—GDX Automotive, Marion, IN
TA–W–39,175; Flextronics Binghamton, Conklin, NY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons, specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,237; A and E Products Group, Forest City, NC
TA–W–40,892; JDS Uniphase, Electro-Optic Products Div., Bloomfield, CT
TA–W–40,857; Matco Electronics, Matco East Distribution Center, Verona, VA
TA–W–40,934; Tyco Electronics Corp., Jacobus, PA
TA–W–40,234; Agere Systems, Orlando, FL

TA–W–40,405 & A; Xerox Corp., (Soho), Small Office/Home Office Div., Canadaigua, NY and Farmington, NY
TA–W–40,836; Badger States Tanning, Milwaukee, WI
TA–W–40,997; Kraft Foods Lifesavers Co., Holland, MI

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–40,979; COE Industrial Electronics, Inc., Redlands, CA Located at California Steel Industries, Inc., Fontana, CA
TA–W–40,904; ANR Pipeline Co., Detroit, MI
TA–W–40,837; Golden Books Publishing Co., Inc., Racine, WI
TA–W–40,844; General Electric Co., GE Plastrics, Accounts Payable, Pittsfield, MA

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–40,746; Saint-Gobain Crystals and Detectors, Washougal, WA
TA–W–40,926; EVTAC Mining LLC, Formerly Thunderbird Mining, Eveleth, MN

The investigation revealed that criteria (2) and (3) has not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,495; G and L Service Co., North America (USA), Inc., Eagle Pass, 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–40,493 & A, B; Kaiser Aluminum and Chemical Corp., Tacoma Rod Mill, Tacoma, WA, Mead, WA and Trentwood, WA: November 9, 2000.
TA–W–40,357; Flextronics International, Palm Harbor, FL: November 7, 2000.
TA–W–40,082; Millennium Inorganic Chemicals, Hawkins Point Plant, Baltimore, MD: September 4, 2000.
TA–W–40,924; FCI Electronics, Clearfield, PA: August 15, 2000. Stoneridge, Inc., Cortland, OH: September 1, 2000.
TA–W–40,361; Donaldson Co., Inc., Old Saybrook, CT: November 9, 2000.
TA–W–40,869; Continental Tire North America, Inc., Barnesville, GA: January 2, 2001.
TA–W–40,920; Fasco Industries, Inc., Ozark, MO: August 15, 2000.
TA–W–40,217; Shirts Plus II, Inc., Loretto, TN: September 17, 2000.
TA–W–40,038; H H Smith, Inc., Meadville, PA: August 31, 2000.
TA–W–40,745; New Holland North America, Inc., CNH Global N.V., Belleville, PA: December 13, 2000.
TA–W–40,864; U.S. Consolidation, Inc., Newark, NJ: July 31, 2000.
TA–W–40,674 & A; B.B. Walker Co., Asheboro, NC and Bender Shoe Co., Somerset, PA: December 17, 2000.
TA–W–40,563; Bestform, Inc., Broad Street Sewing Facility, Johnstown, PA: December 23, 2001.
TA–W–40,563A, B, C; Bestform, Inc., Johnstown Distribution Center, Johnstown, PA, Windber Sewing Facility, Windber, PA and Sidman Distribution Center, Sidman, PA: October 17, 2000.
TA–W–40,993; L and G Manufacturing, Inc., Archbald, PA: January 16, 2001.
TA–W–40,811; Materials Processing, Inc., Coatings Div., Riverview, MI: January 8, 2001.
TA–W–40,604; & Matsushita Kotokubi Electronics Industries of America, Vancouver, WA and Matsushita Kotobuki Electronics Sales of America, Portland, OR: November 13, 2000.
TA–W–40,680; Pan-Am Shoe Co., Inc., Camuy, PR: December 21, 2000.
TA–W–40,884; Tracy Minntronix Corp., Tracy, MN: January 29, 2001.
TA–W–39,606; California Manufacturing Co., California, MO: June 19, 2000.
TA–W–39,354; Neely Manufacturing Co., Smithville, TN: May 15, 2000.
TA–W–40,271 & A; Symbol Technologies, Holtsville, NY and Bohemia, NY: September 18, 2000.
TA–W–40,545; Appleton Coated Papers, Combined Locks, WI: December 27, 2000.
TA–W–40,864; ECC Card Clothing, Inc., A Div. Of Carclo U.S. Holdings, Inc., Fall River, MA: January 14, 2001.
TA–W–40,503; International Paper, International Papers Business, Menasha, WI: November 12, 2000.
TA–W–40,285; Converter Concepts, Inc., Quincy, IL: October 11, 2000.
TA–W–40,584 & A; Rockwell Collins, Pomona, CA and Irvine, CA: January 3, 2001 through March 8, 2004.
TA–W–40,654; In Vogue Apparel, West Hazleton, PA: December 3, 2000.
TA–W–40,582; GE Lighting, Inc., Austintown Products Plant, Youngstown, OH: November 13, 2000.
TA–W–40,340; Linnton Plywood Association, Portland, OR: October 29, 2000.
TA–W–40,667; Leech Tool and Die Works, Inc., Meadville, PA: December 19, 2000.
TA–W–39,716; Michigan Rag Co., Inc., Grand Haven, MI: July 23, 2000.
TA–W–40,160; Crystal Manufacturing, Inc., Fall River, MA: September 17, 2000.
TA–W–40,682; World Kitchen, Inc., Martinsburg, WV: December 20, 2000.
TA–W–40,767; Uniroyal Goodrich Tire Manufacturing, Michelin North America, Inc., Tuscaloosa, AL: November 30, 2000.
TA–W–40,813; & A; Blough-Wagner Manufacturing Co., Inc., Middleburg, PA and Elysburg, PA: January 15, 2001.
TA–W–40,936; LTV Steel Corp., Lime Plant, Grand River, OH: January 28, 2001.
TA–W–40,287; Barranco Apparel Group, Ruth of Carolina Div., Hendersonville, NC: October 10, 2000.
TA–W–40,898; St. Clair Technologies, Inc., Charlotte, MI: February 4, 2001.
TA–W–40,848; Wateree Textile Corp., Lugoff, SC: January 10, 2001.
TA–W–40,927; Teleflex, Inc., Waterbury, CT: February 4, 2001.
TA–W–40,907; Pak-Mor Manufacturing Co., San Antonio, TX: January 23, 2001.
TA–W–39,458; MacDonald Footwear, Inc., Skowhegan, ME: June 1, 2000.
TA–W–40,162; Coraza Systems, Inc., Formerly Computer Cabinet Corp., San Jose, CA: September 18, 2000.
TA–W–39,923; Illbruck Automotive, Inc., Howell, MI: September 4, 2000.
TA–W–40,859; Jacmel Jewelry, Inc., Long Island City, NY: November 27, 2000.
TA–W–40,464; Low Complexity Manufacturing Group, Inc., Utica, NY: October 8, 2000.
TA–W–40,283; United Foods, Inc., Pictsweet Mushroom Farm, Salem, OR: September 20, 2000.
TA–W–40,525 & A,B,C,D; The Boeing Co., Commercial Airplane Group, Seattle, WA, Puget Sound Region, WA, Spokane, WA, Portland, OR and Wichita, KS: February 25, 2002.
TA–W–40,933; Oxford Slacks, Oxford Slacks Div., Of Oxford Industries, Inc., Monroe, GA: January 29, 2001.
TA–W–40,782; Philadelphia Mixers, Palmyra, PA: January 30, 2001.
TA–W–40,964; Ultrafem, Inc., Missoula, MT: January 16, 2001.
TA–W–39,852; Alfred Angelo Co., Horsham, PA: August 7, 2000.
TA–W–39,540; Oxford Automotive, Masury, OH: June 13, 2000.
TA–W–39,856; Krisport, Inc., Wheeling, WV: August 7, 2000.
TA–W–39,815; Columbus McKinnon Corp., Yale Hoists Div., Forrest City, AR: August 2, 2000.
TA–W–40,456; Magnequench International, Anderson, IN: December 7, 2000.
TA–W–40,459; Ispat Inland, Inc., Indiana Harbor Works, East Chicago, IN: December 13, 2000.
TA–W–40,810 & A, B; Solon Manufacturing Co., Skowhegan, ME, Solon, ME and Plymouth, NH: January 15, 2001.
TA–W–40,820 & A; John Solomon, Inc., Somerville, MA and Winder, GA: January 16, 2001.
TA–W–40,630: U.S.A. Apparel Enterprises, Inc., Fall River, MA: November 30, 2000.
TA–W–40,703 & A, B; Liberty Fabrics, Div. of Sara Lee, New York, Gordonsville, VA and LCM Facility, Gordonsville, VA: December 27, 2000.
TA–W–39,337; Bayer Corp., Consumer Care Div., Elkart, IN: May 14, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. 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 March, 2002.

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 increased imports 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–05792; TNS Mills, Inc., Rockingham, NC
NAFTA–TAA–05655; Kennametal Industrial Product Group, A Subsidiary of Kennametal, Inc., Pine Bluff, AR
NAFTA–TAA–05603; In Vogue Apparel, West Hazelton, PA
NAFTA–TAA–05294; Arms Industrial, Inc., Lockport, IL
NAFTA–TAA–05581; G and L Service Company, North America (USA), Inc., Eagle Pass, TX
NAFTA–TAA–05751; Goodyear Tire and Rubber Co., East Gadsden, AL
NAFTA–TAA–05215; APW Mayville LLC, Mayville, WI
NAFTA–TAA–05005; California Manufacturing Co., California, MO
NAFTA–TAA–05548; Clebert's Hosiery Mill, Inc., Connelly Springs, NC
NAFTA–TAA–05858; West Point Foundry and Machine Co., West Point, GA
NAFTA–TAA–05890; Kraft Foods, Lifesavers Co., Holland, MI
NAFTA–TAA–-05726 & A; Agere Systems, Optoelectronics Div., Breinigsville, PA and Reading, PA
NAFTA–TAA–05493; Buckeye Steel Castings Co., Columbus, OH
NAFTA–TAA–05737; Harsco Corp., Heckett-Multiserv Div., Whiting, IN, Located at LTV Steel, East Chicago, IN
NAFTA–TAA–04868; Flextronics Binghamton, Conklin, NY
NAFTA–TAA–05082; Columbus McKinnon Corp., Yale Hoists Div., Forrest City, AR
NAFTA–TAA–05589; Gencorp—GDX Automotive, Marion, IN
NAFTA–TAA–05354; A and E Products Group, Forest City, NC
NAFTA–TAA–05699; Applied Concepts, Inc., Warrendale, PA
NAFTA–TAA–05766; Badger States Tanning, Milwaukee, WI

The workers firm does not produce an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended.

NAFTA–TAA–5756; AT&T, Broadband Div., Los Angeles, CA
NAFTA–TAA–5856; Black and Decker Power Tools, Nashville, TN

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment.

NAFTA–TAA–05362; Key Plastics, LLC, Felton, PA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–05810; Sanmina, Inc., A Subsidiary of Sanmina–Sci Company, Clinton, NC

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05899; Renfro Corp., Star Plant, Star, NC: February 22, 2001.
NAFTA–TAA–05925; Master Lock Co., A Subsidiary of Fortune Brands, Inc., Milwaukee, WI: January 31, 2001.
NAFTA–TAA–05828; T and K Manufacturing, Brownstown, PA: January 23, 2001.
NAFTA–TAA–05822; Sims Manufacturing Co., Inc., Rutland, MS: January 30, 2001.
NAFTA–TAA–05824; Uniroyal Goodrich Tire Manufacturing, Michelin North America, Inc., Tuscaloosa, AL: January 30, 2001.
NAFTA–TAA–05146; Atchison Products, Inc., Boonville, MO: July 25, 2000.
NAFTA–TAA–05495; Thermal Industries, Inc., Vinylium Corp., Pittsburgh, PA: October 19, 2000.
NAFTA–TAA–05652; Magnequench International, Anderson, IN: December 13, 2000.
NAFTA–TAA–05307; H H Smith, Inc., Meadville, PA: August 31, 2000.
NAFTA–TAA–05279; Fasco Industries, Inc., Ozark, MO: August 6, 2000.
NAFTA–TAA–05757; Wateree Textile Corp., Lugoff, SC: January 10, 2001.
NAFTA–TAA–05710 & A; Rockwell Collins, Passenger Systems, Pomona, CA, Irvine, CA: January 3, 2001 Through March 8, 2004.
NAFTA–TAA–05502; Linnton Plywood Association, Portland, OR: October 30, 2000.
NAFTA–TAA–05595; Tenneco Automotive, Ligonier, IN: November 29, 2000.
NAFTA–TAA–05791; L and G Manufacturing, Inc., Archbald, PA: January 16, 2001.
NAFTA–TAA–05695 & A; B.B. Walker Co., Asheboro, NC and Bender Shoe Co., Somerset, PA: December 19, 2000.
NAFTA–TAA–5798; Oxford Slacks, Oxford Slacks Div., Div. of Oxford Industries, Inc., Monroe, GA: November 24, 2001.
NAFTA–TAA–05800; FDB, Inc., Lincolnton, GA: January 24, 2001.
NAFTA–TAA–05582; Kentucky Textiles, Inc., Paris, KY: November 20, 2000.
NAFTA–TAA–5902; Cedo Door Products, Ass Ablow Door Group LLC, Harlingen, TX: January 2, 2001.
NAFTA–TAA–05908; TRW, Inc., TRW Automotive, Cookville, TN: February 22, 2001.
NAFTA–TAA–5913; JDS Uniphase, Electro-Optic Products Div., Bloomfield, CT: February 12, 2001.
NAFTA–TAA–05736 & A, B; Solon Manufacturing Co., Skowhegan, ME, Solon, ME and Plymouth, NH: January 15, 2001.
NAFTA–TAA–05796 & A; John Solomon, Inc., Somerville, MA and Winder, GA: January 31, 2001.
NAFTA–TAA–05761; Clear Pine Mouldings, Inc., Prineville, OR: January 8, 2001.
NAFTA–TAA–04912; Neely Manufacturing Co., Smithville, TN: May 15, 2000.
NAFTA–TAA–05838; Philadelphia Mixers, Palmyra, PA: December 10, 2000.
NAFTA–TAA–05370; New World Pasta LLC, Lebanon, PA: September 22, 2000.
NAFTA–TAA–05781; Pak-Mor Manufacturing Co., San Antonio, TX: January 18, 2001.
NAFTA–TAA–05928; Perkinelmer Life Sciences, Inc., Beltsville, MD: January 4, 2001.
NAFTA–TAA–05684; Kraft Foods North America, Inc., Allentown, PA: December 13, 2000.
NAFTA–TAA–05371; Coraza Systems, Inc., Formerly Computer Cabinet Corpo., San Jose, CA: September 18, 2000.
NAFTA–TAA–05450; United Foods, Inc., Pictsweet Mushroom Farm, Salem, OR: September 20, 2000.
NAFTA–TAA–05825; Vaapco Group, LLC, d/b/a Novatek Manufacturing, Millers Tavern, VA: January 23, 2001.
NAFTA–TAA–05855; Low Complexity Manufacturing Group, Inc., Utica, NY: October 23, 2000.
NAFTA–TAA–05890; Bayer Corp., Consumer Care Div., Elkhart, IN: May 14, 2000.

I hereby certify that the aforementioned determinations were issued during the month of March,

2002. 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: March 22, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–7594 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,595]

Elkem Metals Company, Alloy, West Virginia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 22, 2002 in response to a worker petition which was filed by Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–89 on behalf of workers at Elkem Metals Company, Alloy, West Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed in Washington, D.C. this 5th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7599 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,794]

Frederick Goldman, New York, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2002, in response to a petition filed by workers on behalf of all workers at Frederick Goldman, New York, New York.

The petition group of workers is under an existing investigation for which a determination has not been issued (TA–W–40,774). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 4th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7600 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,467]

Gold Seam, Passaic, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 21, 2001, in response to a worker petition that was filed on behalf of workers at Gold Seam, Passaic, New Jersey.

The Department was unable to locate an official of the company to obtain the information necessary to issue a determination (TA–W–40,467). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 21st day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7598 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,577]

Kurt Manufacturing Company, Minneapolis, Minnesota; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 14, 2002, in response to a petition filed by three workers on behalf of all workers at Kurt Manufacturing Company, Minneapolis, Minnesota.

The workers' petition regarding the investigation is invalid. Each of the petitioners is employed in a different division of Kurt Manufacturing. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed at Washington, D.C., this 8th day of March 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7597 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,801]

LTV Steel Corporation River Terminal Railway Company LTV Railroad Companies, Cleveland, Ohio: Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2002, in response to a worker petition filed by the United Transportation Union, Local 1661, on behalf of workers at River Terminal Railway Company, LTV Railroad Companies, LTV Steel Corporation, Cleveland, Ohio.

The petitioning group of workers is subject to an ongoing investigation (TA–W–40,786). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed in Washington, D.C. this 21st day of March 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7596 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,423]

Outboard Marine Corporation (OMC), Delavan, Wisconsin; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 2001, in response to a petition filed on behalf of all workers at Outboard Marine Corporation (OMC), Delavan, Wisconsin.

The company filed Chapter 7 bankruptcy for all the locations of the Outboard Marine Corporation, including the subject facility. The trustee was unable to locate the records of the company to provide the Department the information necessary to issue a determination regarding the worker

group eligibility requirements under Section 222 of the Trade Act of 1974. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 5th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7602 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,291]

U.S. Bronze Foundry & Machine Incorporated, Meadville, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 29, 2001, in response to a petition filed by a company official on behalf of workers at U.S. Bronze Foundry & Machine Inc., Meadville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7601 Filed 3–28–02; 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 determination 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 purposes 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.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

No. WI020039—See WI020033
No. WI020040—See WI020033

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I:

New York
NY020013 (Mar. 01, 2002)

VOLUME II:

Pennsylvania
PA020001 (Mar. 01, 2002)
PA020002 (Mar. 01, 2002)
Pennsylvania
PA020003 (Mar. 01, 2002)
PA020004 (Mar. 01, 2002)
PA020011 (Mar. 01, 2002)
PA020013 (Mar. 01, 2002)
PA020016 (Mar. 01, 2002)
PA020027 (Mar. 01, 2002)
PA020041 (Mar. 01, 2002)
PA020042 (Mar. 01, 2002)
PA020043 (Mar. 01, 2002)

VOLUME III:

Florida
FL020001 (Mar. 01, 2002)
FL020009 (Mar. 01, 2002)
FL020012 (Mar. 01, 2002)
FL020017 (Mar. 01, 2002)
FL020032 (Mar. 01, 2002)
FL020034 (Mar. 01, 2002)

FL020045 (Mar. 01, 2002)
FL020096 (Mar. 01, 2002)
FL020100 (Mar. 01, 2002)
FL020103 (Mar. 01, 2002)
Kentucky
KY020025 (Mar. 01, 2002)

VOLUME IV:

Wisconsin
WI020016 (Mar. 01, 2002)
WI020017 (Mar. 01, 2002)
WI020032 (Mar. 01, 2002)
WI020033 (Mar. 01, 2002)

VOLUME V:

Iowa
IA020004 (Mar. 01, 2002)
Kansas
KS020002 (Mar. 01, 2002)
KS020006 (Mar. 01, 2002)
KS020007 (Mar. 01, 2002)
KS020012 (Mar. 01, 2002)
KS020013 (Mar. 01, 2002)
KS020015 (Mar. 01, 2002)
KS020016 (Mar. 01, 2002)
KS020018 (Mar. 01, 2002)
KS020019 (Mar. 01, 2002)
KS020020 (Mar. 01, 2002)
KS020021 (Mar. 01, 2002)
KS020023 (Mar. 01, 2002)
KS020028 (Mar. 01, 2002)
KS020035 (Mar. 01, 2002)
Oklahoma
OK020013 (Mar. 01, 2002)
OK020014 (Mar. 01, 2002)
OK020016 (Mar. 01, 2002)
OK020034 (Mar. 01, 2002)
OK020036 (Mar. 01, 2002)
OK020037 (Mar. 01, 2002)
Texas
TX020002 (Mar. 01, 2002)
TX020003 (Mar. 01, 2002)
TX020007 (Mar. 01, 2002)
TX020010 (Mar. 01, 2002)
TX020051 (Mar. 01, 2002)
TX020054 (Mar. 01, 2002)
TX020081 (Mar. 01, 2002)

VOLUME VI:

Alaska
AK020001 (Mar. 01, 2002)
AK020002 (Mar. 02, 2002)
AK020006 (Mar. 01, 2002)
AK020008 (Mar. 02, 2002)
Colorado
CO020001 (Mar. 01, 2002)
CO020016 (Mar. 01, 2002)
Oregon
OR020001 (Mar. 01, 2002)
OR020017 (Mar. 01, 2002)
Washington
WA020001 (Mar. 01, 2002)
WA020002 (Mar. 01, 2002)
WA020005 (Mar. 01, 2002)

VOLUME VII:

California
CA020001 (Mar. 01, 2002)
CA020002 (Mar. 01, 2002)
CA020004 (Mar. 01, 2002)
CA020009 (Mar. 01, 2002)
CA020019 (Mar. 01, 2002)
CA020023 (Mar. 01, 2002)
CA020025 (Mar. 01, 2002)
CA020028 (Mar. 01, 2002)
CA020029 (Mar. 01, 2002)
CA020030 (Mar. 01, 2002)
CA020031 (Mar. 01, 2002)
CA020032 (Mar. 01, 2002)
CA020033 (Mar. 01, 2002)
CA020035 (Mar. 01, 2002)
CA020036 (Mar. 01, 2002)
CA020037 (Mar. 01, 2002)
Nevada
NV020004 (Mar. 01, 2002)
NV020005 (Mar. 01, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2168. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 21st day of March 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–7301 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11002, et al.]

Proposed Exemptions; Deutsche Bank AG

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The

applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG, Located in Frankfurt/Main, Germany

[Exemption Application No.: D–11002]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

I. General Exemption

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in section V(b)), in which the plan has an interest, and which is managed by Deutsche Bank AG (Deutsche Bank or the Applicant)(as defined in section V(a)), if the following conditions are satisfied:

(a) At the time of the transaction (as defined in section V(i)), the party in interest, or its affiliate (as defined in section V(c)), does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate Deutsche Bank as a manager of any of the plan's assets, or

(2) Negotiate the terms of the management agreement with Deutsche Bank (including renewals or modifications thereof) on behalf of such plan;

(b) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6)[2] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1)[3] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87)[4] (relating to certain mortgage financing arrangements);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of Deutsche Bank, and either Deutsche Bank, or (so long as Deutsche Bank retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by Deutsche Bank, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(d) The party in interest dealing with the investment fund is neither Deutsche Bank nor a person related to Deutsche Bank (within the meaning of section V(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by Deutsche Bank, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of this exemption) or by the same employee organization, and managed by Deutsche Bank, represent more than 20 percent (20%) of the total client assets managed by Deutsche Bank at the time of the transaction;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Deutsche Bank, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g)(1) Neither Deutsche Bank nor any affiliate thereof (as defined in section V(d)), nor any owner, direct or rect, of a 5 percent (5%) or more interest in Deutsche Bank is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of the Act.

(2) The relief provided by this exemption is available to Deutsche Bank (as defined in section V(a)), notwithstanding the guilty plea on March 11, 1999, of Deutsche Bank's affiliate, Bankers Trust Company (Bankers Trust), to three counts of violations of 18 U.S.C. § 1005, provided that neither Deutsche Bank nor any affiliate, nor any owner, direct or indirect of a 5 percent (5%) or more interest in Deutsche Bank is convicted of any of the crimes (described in section I(g)(1)), and provided that Bankers Trust is not subsequently convicted of any crimes (described in section I(g)(1)).

(3) For purposes of this section I(g), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[2] 46 FR 7527, January 23, 1981.

[3] 48 FR 895, January 7, 1983.

[4] 47 FR 21331, May 18, 1982.

whether that judgment remains under appeal.

(h) Prior to entering into a transaction covered by this exemption Deutsche Bank must agree in writing with a plan:

(1) That the transaction is governed by the laws of the United States and that Deutsche Bank is a fiduciary of the plan pursuant to the provisions of the Act;

(2) To submit to the jurisdiction of the United States district courts;

(3) To appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); and

(4) To consent to service of process on the Process Agent.

(i) Upon request, Deutsche Bank provides to each plan affected by this exemption copies of the Notice of Proposed Exemption (the Notice) and the final exemption, if granted;

(j) Deutsche Bank provides each plan affected by this exemption with a written consent to service of process in the United States and to the jurisdiction of the courts of the United States for any civil action or proceeding brought against Deutsche Bank with respect to the subject transactions, which consent provides that process may be served on Deutsche Bank through service on Deutsche Bank's New York branch (or any other branch or affiliate of Deutsche Bank that is domiciled in the United States);

(k) Deutsche Bank and/or its affiliates (as defined in section V(c)(1)), maintains or causes to be maintained within the United States for a period of six (6) years from the date of each transaction covered by this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable persons (as described in section I(l)) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank and/or its affiliates (as defined in section V(c)(1)), records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than Deutsche Bank and/or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination (as required by section I(l)(1));

(l)(1) Except as provided in section I(l)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in section I(k) are unconditionally available at their customary location during normal business hours to: (i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission; (ii) any fiduciary of a plan affected by this exemption or any duly authorized representative of such fiduciary; (iii) any contributing employer to any plan affected by this exemption or any duly authorized employee representative of such employer; and (iv) any participant or beneficiary of any plan affected by this exemption, or any duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in section I(l)(1)(ii)–(iv) are authorized to examine the trade secrets of Deutsche Bank or commercial or financial information which is privileged or confidential;

(m) Upon request, Deutsche Bank discloses to the plan sponsor and/or the named fiduciary of each plan affected by this exemption information concerning the nature and extent of Deutsche Bank's regulation by German governmental authorities.

II. Specific Exemptions for Employers

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a), 406(b)(1) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The sale, leasing, or servicing of goods (as defined in section V(j)), or to the furnishing of services, to an investment fund managed by Deutsche Bank, by a party in interest with respect to a plan having an interest in the investment fund, if__

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after the date this exemption is granted, the amount attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to section II(a) of this exemption does not exceed one percent (1%) of the gross receipts derived from all sources for the prior taxable year of such party in interest, and

(5) The requirements of sections I(c) through (n) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund managed by Deutsche Bank to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by such plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) No commission or other fee is paid by the investment fund to Deutsche Bank or to the employer, or to an affiliate of Deutsche Bank or the employer (as defined in section V(c)), in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of Deutsche Bank in which such plan has an interest does not exceed 10 percent (10%) of the fair market value of the assets of such plan held in those investment funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a plan shall be considered to own the same proportionate undivided interest in each asset of the investment fund or funds as its proportionate interest in the total assets of the investment fund(s). For purposes of this requirement, the term, ''employer real property,'' means real property leased to, and the term, ''employer securities,'' means securities issued by, an employer any of whose employees are covered by such plan or a party in interest of the plan by reason of a relationship to the employer described in subparagraphs (E) or (G) of section 3(14) of the Act, and

(6) The requirements of sections I(c) through (n) are satisfied with respect to the transaction.

III. Specific Lease Exemption for Deutsche Bank

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an investment fund managed by Deutsche Bank to Deutsche Bank, a person who is a party in interest of a plan by virtue of a relationship to Deutsche Bank described in subparagraphs (G), (H), or (I) of section 3(14) of the Act, or a person not eligible for the General Exemption of Part I of this exemption by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed the greater of 7500 square feet or one percent (1%) of the rentable space of the office building, integrated office park or of the commercial center in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Deutsche Bank, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission or other fee is paid by the investment fund to Deutsche Bank, any person possessing the disqualifying powers described in section I(a), or any affiliate of such persons (as defined in section V(c)), in connection with the transaction.

IV. Transactions Involving Places of Public Accommodation

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by Deutsche Bank to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

V. Definitions

For purposes of this exemption:

(a) The term, ''Deutsche Bank'' means Deutsche Bank AG, provided that Deutsche Bank AG: (i) has the power to manage, acquire or dispose of assets of a plan affected by this exemption; (ii) has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) in excess of $10,000,000; (iii) has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained Deutsche Bank AG to manage the assets of the plan; and (iv) is subject to regulation by the German federal banking supervisory authority, known as the Bundesaufsichtsamt fuer das Kreditwesen (the BAK).

(b) An ''investment fund'' includes individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of Deutsche Bank) is subject to the discretionary authority of Deutsche Bank.

(c) For purposes of section I(a), section I(k), and Part II, an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by such plan will also be considered affiliates with respect to each other for purposes of section I(a), if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of section I(g), an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or 5 percent (5%) or more partner, or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as described in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets.

(e) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(g) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act, or a brother, a sister, or a spouse of a brother or sister.

(h) Deutsche Bank is ''related'' to a party in interest for purposes of section I(d) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in Deutsche, Bank or if Deutsche Bank (or a person controlling, or controlled by, Deutsche Bank) owns a 5 percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term, ''interest,'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights, or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) The ''time'' as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction

that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the effective date of this exemption, or a renewal that requires the consent of Deutsche Bank occurs on or after such effective date, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such time as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to Deutsche Bank. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of Deutsche Bank. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term, ''goods'' includes all things which are movable or which are fixtures used by an investment fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(k) For purposes of section V(a) of this exemption, the term ''equity capital'' means stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption, if granted, will be effective retroactively but will be temporary in nature. In this regard, Deutsche Bank, AG, among others, on July 27, 1999, obtained Prohibited Transaction Exemption 99–29 (PTE 99–29) [5] which provided that it would not be precluded from functioning as a ''qualified professional asset manager'' (a QPAM), pursuant to Prohibited Transaction Class Exemption 84–14 (PTCE 84–14),[6] solely because of a failure to satisfy section I(g) of PTCE 84–14, as a result of a guilty plea filed by an affiliate on March 11, 1999, to three counts of a felony. The relief provided by PTE 99–29 was limited to a period of ten (10) years from July 27, 1999, the date of the publication of the final exemption for PTE 99–29 in the **Federal Register**. The Department in proposing the subject exemption does not intend that, if granted, the relief, as described herein, be available beyond the time remaining in the ten (10) year period established by PTE 99–29. Accordingly, the relief provided by this exemption, if granted, will be retroactive, effective as of June 12, 2001, the date when the application for exemption was filed with the Department, and will continue to be available through July 27, 2009, the date that is ten (10) years from the publication in the **Federal Register** of the final exemption for PTE 99–29.

In the case of a transaction that continues beyond July 27, 2009, the transaction shall be deemed to occur until it is terminated. Although the relief provided by this exemption will not be available after July 27, 2009, for any new, or other transactions that require the consent of Deutsche Bank, as described herein, such relief will continue to apply beyond July 27, 2009, for continuing transactions entered into prior to that date, provided such transactions satisfied the conditions of this exemption. In this regard, see section V(i) regarding continuing transactions.

Should the Applicant wish to extend, beyond July 27, 2009, the relief provided by this exemption to new or additional transactions, or should the Applicant wish for any reason to amend the conditions of this exemption, the Applicant may submit another application for exemption. In this regard, the Department expects that prior to filing another exemption application seeking relief for new or additional transactions or to amend this exemption, the Applicant should be prepared to demonstrate compliance with the conditions of this exemption.

Summary of Facts and Representations

1. The request for relief from the prohibited transaction provisions of the Act and Code was filed on behalf of Deutsche Bank and, if granted, will be applicable to Deutsche Bank, as that term is defined in Section V(a) of this proposed exemption. Deutsche Bank is a bank organized under the laws of the Federal Republic of Germany. In this regard, Deutsche Bank provides a broad variety of banking, fiduciary, record keeping, custodial, brokerage, and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans, and private investors worldwide.

As of December 31, 2000, Deutsche Bank held 697,306 million Euros in assets and 19,807 million Euros in stockholder equity. Deutsche Bank manages over $585 billion in assets either through collective trusts, separately managed accounts, or mutual funds. It is represented that, as of the last day of its most recent fiscal year, Deutsche Bank has equity capital in excess of $10,000,000.

2. It is anticipated that plans, particularly large plans, with hundreds or thousands of known and unknown parties in interest may enter into the transactions described in this proposed exemption. Deutsche Bank anticipates that such transactions would include derivatives, repurchase agreements with foreign banks or broker dealers, foreign exchange transactions, and other transactions not exempted by other individual or class exemptions.[7]

3. The exemption requested by Deutsche Bank would permit: (1) Transactions between parties in interest with respect to a plan and an investment fund in which such plan has an interest, if the assets in such fund are managed by Deutsche Bank; (2) the sale, leasing, servicing of goods, or the furnishing of services to an investment fund managed by Deutsche Bank by an employer or an affiliate, and the leasing of office or commercial space by such investment fund to an employer or an affiliate where plans sponsored by such employer or an affiliate have an interest in such fund; (3) the leasing of office or commercial space by an investment fund managed by Deutsche Bank to Deutsche Bank or a person who is a

[5] 64 FR 40623, July 27, 1999

[6] 49 FR 9494 (March 13, 1984), as corrected, 50 FR 41430 (October 10, 1985).

[7] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this proposed exemption, and that satisfaction of the conditions of this proposed exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the manager or other plan fiduciary must act prudently with respect to the decision to enter into an investment transaction, as well as to the negotiation of the specific terms under which the plan will engage in such transaction. In addition, the plan's named fiduciary must act prudently and solely in the interest of the plan's participants and beneficiaries in selecting Deutsche Bank to manage plan assets and in periodically monitoring Deutsche Bank's performance.

party in interest of a plan by virtue of a relationship to Deutsche Bank, as described in 3(14)(G) (H), or (I) of the Act, or a person not eligible for the general exemption of Part I of this proposed exemption by reason of section I(a); and (4) the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund which is managed by Deutsche Bank to a party in interest with respect to a plan having an interest in such fund; provided certain condition are satisfied. The Applicant represents that these transactions have not been consummated, nor will such transactions be consummated without an exemption.

Relief is requested from the prohibitions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act and section 4975(c)(1)(A)-(E) of the Code. According to the Applicant, the transactions described in Parts I, II, III, and IV of this proposed exemption may violate section 406(a)(1)(A)–(D) of the Act, because a party in interest is involved or may be benefitted. Further, in the opinion of the Applicant, the transactions described in Parts II, III, and IV of this proposed exemption would arguably violate 406(b)(1) of the Act, because such transactions may benefit a sponsoring employer, investment manager, or other plan fiduciaries. Further, the transactions described in section II(b) of the proposed exemption may violate section 407(a) of the Act, because such transactions involve the leasing of fund real property to sponsoring employers. Finally, the transactions described in sections III and IV of this proposed exemption could violate section 406(b)(2) of the Act and section 4975(c)(1)(E) of the Code to the extent that Deutsche Bank, the employer, or other fiduciary with authority or control over plan assets is involved in the transactions.

4. With regard to each of the transactions described in paragraph 3 above, Deutsche Bank has requested relief from the prohibited transaction provisions of the Act and Code which is identical to the relief granted in PTCE 84–14. PTCE 84–14 provides conditional relief for various parties in interest to engage in transactions involving plan assets if, among other conditions, such assets are managed by a QPAM, who is independent of such parties in interest.

PTCE 84–14 does not permit a foreign bank to act as a QPAM. In this regard, section V(a)(1) of PTCE 84–14 requires that, in order to qualify as a QPAM, a bank must be a banking institution organized under the laws of the United States, as defined in section 202(a)(1) of the Investment Advisers Act of 1940. As Deutsche Bank is organized under the laws of the Federal Republic of Germany, rather than the laws of the United States, Deutsche Bank does not qualify as a QPAM, and cannot rely on the relief provided by PTCE 84–14. Accordingly, Deutsche Bank has submitted an application for administrative exemption and requested the relief proposed herein.

In the opinion of the Applicant, the fact that Deutsche Bank is not a U.S.-chartered bank carries little, if any significance in terms of the ability of Deutsche Bank to operate independently or to manage plan assets efficiently and effectively. Given Deutsche Bank's size, global geographic distribution, financial strength, and experience managing assets, the Applicant maintains that Deutsche Bank is better qualified than many U.S. banks to act as an independent asset manager.

5. Deutsche Bank believes that its operations are regulated as much as U.S.-chartered banks. In this regard, Deutsche Bank's operations are regulated not only by the supervisory authorities of various host countries, but by German authorities, as well. Specifically, Deutsche Bank is subject globally to comprehensive supervision and regulation on a consolidated basis by the German federal banking supervisory authority, referred to herein as the BAK. The BAK is a federal institution with ultimate responsibility to the German Ministry of Finance. The BAK supervises the operations of banks, banking groups, financial holding groups and foreign bank branches in Germany and has the authority to: (a) Issue and withdraw banking licenses, (b) issue regulations on capital and liquidity requirements of banks, (c) request information and conduct investigations, (d) intervene in cases of inadequate capital or liquidity, endangered deposits, or bankruptcy by temporarily prohibiting certain banking transactions.

The BAK ensures that Deutsche Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and financial resources. The BAK reviews compliance with these operational and internal control standards through an annual audit performed by the year-end auditor and through special audits ordered by the BAK. The supervisory authorities require information on the condition of Deutsche Bank and its branches through periodic consolidated financial reports and through a mandatory annual report prepared by the auditor.

Additionally, the BAK in cooperation with the Deutsche Bundesbank (Bundesbank) supervises all branches of Deutsche Bank, wherever located. The Bundesbank is the central bank of the Federal Republic of Germany and is an integral part of the European Central Banks. For Deutsche Bank's branches domiciled in European Economic Area (EEA) member states, the BAK is the lead supervisory authority pursuant to the rule on the ''European Passport,'' and only some aspects are subject to complementary supervision by supervisory authority of the host country.

It is represented that Deutsche Bank is subject to announced and unannounced on-site audits, and all other supervisory controls applicable to German Banks. With respect to branches located in EEA member states, such audits are carried out consistent with applicable European directives. With respect to branches outside the EEA, such audits are carried out consistent with applicable international agreements, memoranda of understanding, or other arrangements with the relevant foreign supervisory authorities.

Deutsche Bank's branches domiciled outside the EEA are also subject to local regulation and supervision by the supervisory authority of the host country. In this regard, for example, Deutsche Bank AG, New York Branch, is regulated and supervised by the New York State Banking Department. Certain activities of Deutsche Bank AG, New York Branch are also regulated and supervised by the Federal Reserve Bank of New York.

There are two deposit insurance programs that cover Deutsche Bank. The first is a European Union required mandatory deposit insurance system established in 1998 that insures deposits denominated in the currency of an EEA member state up to the lesser of 90 percent (90%) of the deposit amount or 20,000 euros. This statutory deposit protection scheme is maintained, as far as private commercial banks like Deutsche Bank are concerned, by a separate institution and is subject to supervision by the BAK. In addition since 1976, the Association of German Banks has maintained a voluntary deposit protection program called the Deposit Protection Fund that safeguards liabilities in excess of the thresholds guaranteed by the European Union program, up to a protection ceiling for each creditor of 30 percent (30%) of the liable capital of the bank. The Deposit

Protection Fund is funded by regular contributions paid by every German bank which has elected to participate in the Deposit Protection Fund. Participating banks may be required to make special contributions to the extent requested by the Deposit Protection Fund to enable it to fulfill its purpose. It is represented that Deutsche Bank has elected to participate in the Deposit Protection Fund.

Upon request, Deutsche Bank will disclose to the plan sponsor and/or the named fiduciary of each plan affected by this exemption information concerning the nature and extent of Deutsche Bank's regulation by German governmental authorities, as described above and in the application for exemption. In addition, Deutsche Bank will provide to each plan affected by this exemption, if granted, copies of the proposed and the final exemption.

6. The Applicant maintains that the proposed exemption is administratively feasible because, the requested exemption would not impose any administrative burden on the Department which is not already imposed by PTCE 84–14. In this regard, no action would be necessary on the part of the Department to effect the transactions other than by granting the exemption. As a condition of this exemption, Deutsche Bank or an affiliate must maintain or cause to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the Department, the IRS, and other persons to determine whether the conditions of this exemption have been met.

7. The Applicant believes that the proposed exemption is in the best interest of the participants and beneficiaries of the affected plans. In this regard, the Applicant maintains that the proposed transaction would broaden the choice of qualified independent assets managers available to such plans, would increase transactional efficiencies, and would afford greater opportunities to such plans to diversify through international investments. With a physical presence in 27 different countries and with access to 90 markets worldwide, the Applicant maintains that Deutsche Bank can provide more informed and cost-efficient asset management services for international investments than most U.S. banks.

8. Without the proposed exemption, plans might lose opportunities to enter into beneficial financial transactions with parties in interest that would enhance the return to such plans. In this regard, restricting plans to domestic banks which may have little or no expertise or connections with a given target market may result in inefficient execution, investment decisions based on imperfect information, or missed investment opportunities.

9. In the absence of the proposed exemption, the Applicant must undertake costly and time consuming steps to examine each transaction to ensure that a given transaction on behalf of a plan investor does not involve or benefit the many parties in interest that may exist with respect to such plan. These efforts encompass not only a plan's primary investments, but also collateral investments and investment-related transactions, including, *e.g.,* sweep investments necessary for cash management, foreign exchange transactions necessary for investments denominated in foreign currencies, securities lending, and the use of brokers and agents to execute the foregoing. In this regard, the Applicant points out that the costs of these efforts are ultimately borne by the plan investors, as reflected in higher asset management fees, higher transaction costs, and opportunity costs.

10. The proposed exemption contains conditions which are designed to ensure the presence of adequate safeguards to protect the interests of the participants and beneficiaries of plans regarding the subject transactions. Except for the fact that Deutsche Bank is not a U.S.-chartered bank, as required by section V(a)(1) of PTCE 84–14, the proposed exemption contains conditions substantially similar to those which are set forth in PTCE 84–14.

In addition to the requirements of the PTCE 84–14, Deutsche Bank has agreed to additional conditions, as set forth in section I(h) through (m), which are designed to ensure that the plans are protected. In this regard, Deutsche Bank will indemnify and hold harmless each plan affected by this exemption against any harm, damage, or injury (including interest and attorney's fees) arising from any fiduciary breach or other wrongdoing of Deutsche Bank acting in its capacity as asset manager for such plan. Further, Deutsche Bank has agreed that enforcement by a Plan of the indemnity provided by Deutsche Bank will occur in the United States district courts.

It is represented that there are adequate safeguards to minimize the risks associated with the Deutsche Bank's foreign nationality. Deutsche Bank will comply with the indicia of ownership of plan assets requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. To ensure that a plan will not have to litigate in a foreign country, Deutsche Bank has consented to the appointment of an agent for service of process in the United States; has consented to service of process on such agent; and to the jurisdiction of the district courts of the United States for any civil action or proceeding brought against Deutsche Bank with respect to the subject transactions. Such consent provides that process may be served on Deutsche Bank through service on Deutsche Bank's New York branch (or other branch of Deutsche Bank that is domiciled in the United States).

11. In summary, the Applicant represents that the subject transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) Deutsche Bank has, as of the last day of its most recent fiscal year, equity capital in excess of $10,000,000;

(b) Except for the fact that Deutsche Bank is not a U.S.-chartered bank, as required by section V(a)(1) of PTCE 84–14, the proposed exemption contains conditions substantially similar to those which are set forth in PTCE 84–14;

(c) The requested exemption will not impose any administrative burden on the Department which is not already imposed by PTCE 84–14;

(d) In addition to the requirements of the PTCE 84–14, Deutsche Bank has agreed to conditions, as set forth in section I(h) through (m), which are designed to ensure that the affected plans are protected;

(e) Deutsche Bank's operations are subject to significant regulation, not only by the supervisory authorities of various host countries, but by German authorities, as well;

(f) Upon request, Deutsche Bank will disclose to the plan sponsor and/or the named fiduciary of each plan affected by this exemption information concerning the nature and extent of Deutsche Bank's regulation by German governmental authorities;

(g) Upon request, Deutsche Bank will provide to each plan affected by this exemption copies of the proposed and the final exemption, if granted;

(h) The proposed exemption will broaden the choice of qualified independent assets managers available to the affected plans, will increase transactional efficiencies, and will afford greater opportunities to such plans to diversify through international investments; and

(i) Without the proposed exemption, plans might lose opportunities to enter into beneficial financial transactions with parties in interest that would enhance the return to such plans.

Notice to Interested Persons

Deutsche Bank will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement (the Supplemental Statement), as described at 29 CFR § 2570.43(b)(2), to the an independent fiduciary for each plan to which Deutsche Bank currently provides investment management services to inform such persons of the pendency of this proposed exemption. A copy of the Notice, as it appears in the **Federal Register**, and a copy of the Supplemental Statement, will be provided, by first class mailing, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due from interested persons on or before 45 days from the date of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (this is not a toll-free number).

EquiLend LLC (EquiLend), Located in New York, New York

[Exemption Application No.: D–11026]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 8477(c)(3) of the Federal Employees' Retirement System Act of 1986 (FERSA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Sale of EquiLend Products to Plans

If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply to the sale or licensing of certain data and/or analytical tools to an employee benefit plan by EquiLend, a party in interest with respect to such plan, if the following conditions are met:

(a) The terms of any such sale or licensing are at least as favorable to the plan as the terms generally available in an arm's-length transaction involving an unrelated party;

(b) Any data sold/licensed to the plan will be limited to:

(1) Current and historical data related to transactions proposed or occurring on EquiLend's electronic securities lending platform (the Platform) or,

(2) Data derived from current and historical data using statistical or computational techniques; and

(c) Each analytical tool sold/licensed to the plan will be an objective statistical or computational tool designed to permit the evaluation of securities lending activities.

Section II. Use of Platform by Owner Lending Agent/ Sale of EquiLend Products to Plans Represented by Owner Lending Agent

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act, section 8477(c)(2) of FERSA, and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to: (1) The participation in the Platform by an equity owner of EquiLend (an Equity Owner), in its capacity as a securities lending agent for a plan (an Owner Lending Agent); and (2) the sale or licensing of certain data and/or analytical tools by EquiLend to a plan for which an Equity Owner acts as a securities lending agent, if the following conditions are met:

(a) In the case of participation in the Platform on behalf of a plan, to the extent applicable the procedures regarding the securities lending activities conform to the provisions of Prohibited Transaction Class Exemption (PTE) 81–6 (46 FR 7527 (Jan. 23, 1981)), PTE 82–63 (46 FR 14804 (Apr. 6, 1982)), and/or any applicable individual exemption;

(b) None of the fees imposed by EquiLend for securities lending transactions conducted through the use of the Platform at the direction of an Owner Lending Agent will be charged to a plan;

(c) Each securities lender and securities borrower participating in a securities lending transaction through EquiLend will be notified by EquiLend as to its responsibilities with respect to compliance, as applicable, with the Act, the Code, and FERSA;

(d) EquiLend will not act as a principal in any securities lending transaction involving plan assets;

(e) Each Owner Lending Agent will provide prior written notice to its plan clients of its intention to participate in EquiLend;

(f) (1) Except as otherwise provided in paragraph (i), the arrangement pursuant to which the Owner Lending Agent utilizes the services of EquiLend on behalf of a plan for securities lending:

(A) Is subject to the prior written authorization of an independent fiduciary (''an authorizing fiduciary'' as defined in paragraph (b) of section III). For purposes of subparagraph (f)(1), the requirement that the authorizing fiduciary be independent shall not apply in the case of a plan of an Equity Owner (Equity Owner Plan);

(B) May be terminated by the authorizing fiduciary, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent, or (ii) five business days.

Notwithstanding the foregoing, the requirement for prior written authorization will be deemed satisfied in the case of any plan for which the authorizing fiduciary has previously provided written authorization to the Owner Lending Agent pursuant to PTE 82–63, unless such authorizing fiduciary objects to participation in the Platform in writing to the Owner Lending Agent within 30 days following disclosure of the information described in paragraphs (e) and (g) of this section to such authorizing fiduciary; and

(2) Except as otherwise provided in paragraph (i), each purchase or license of a securities lending-related product from EquiLend on behalf of a plan by an Owner Lending Agent:

(A) Is subject to the prior written authorization of an authorizing fiduciary. For purposes of subparagraph (f)(2), the requirement for prior written authorization shall not apply to any purchase or licensing of an EquiLend securities lending-related product by an Equity Owner Plan if the fee or cost associated with such purchase or licensing is not paid by the Equity Owner Plan; and

(B) May be terminated by the authorizing fiduciary within (i) the time negotiated for such notice of termination by the plan and the Owner Lending Agent or (ii) five business days, whichever is lesser, in either case without penalty to the plan, provided that, such authorizing fiduciary shall be deemed to have given the necessary authorization in satisfaction of this paragraph (f)(2) with respect to each specific product purchased or licensed pursuant thereto unless such authorizing fiduciary objects to the Owner Lending Agent within 15 days after the delivery of information regarding such specific product to the authorizing fiduciary in accordance with paragraph (g) of this exemption;

(g) The authorization described in paragraph (f) of this section shall not be deemed to have been made unless the Owner Lending Agent has furnished the authorizing fiduciary with any reasonably available information that the Owner Lending Agent reasonably believes to be necessary for the

authorizing fiduciary to determine whether such authorization should be made, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request. This includes, but is not limited to: (1) A statement that the Equity Owner, as securities lending agent, has a financial interest in the successful operation of EquiLend, and (2) a statement, provided on an annual basis, that the authorizing fiduciary may terminate the arrangement(s) described in (f) above at any time;

(h) Any purchase or licensing of data and/or analytical tools with respect to securities lending activities by a plan pursuant to this section complies with the relevant conditions of section I and will be authorized in advance by an authorizing fiduciary in accordance with the applicable procedures of paragraphs (f), (g) and (i);

(i) (Special Rule for Commingled Investment Funds) In the case of a pooled separate account maintained by an insurance company qualified to do business in a state or a common or collective trust fund maintained by a bank or trust company supervised by a state or federal agency (Commingled Investment Fund), the requirements of paragraph (f) of this section shall not apply, provided that—

(1) The information described in paragraph (g) (including information with respect to any material change in the arrangement) of this section and a description of the operation of the Platform (including a description of the fee structure paid by securities lenders and borrowers), shall be furnished by the Owner Lending Agent to the authorizing fiduciary (described in paragraph (b) of section III) with respect to each plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of any such arrangement or material changes thereto, or, not less than 15 days prior to the purchase or license of any specific securities lending-related product, and, where requested, upon the reasonable request of the authorizing fiduciary. For purposes of this subparagraph, the requirement that the authorizing fiduciary be independent shall not apply in the case of an Equity Owner Plan;

(2) In the event any such authorizing fiduciary notifies the Owner Lending Agent that it objects to participation in the Platform, or to the purchase or license of any EquiLend securities lending-related tool or product, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement or purchase or license, but any existing arrangement need not be discontinued by reason of a plan electing to withdraw; and

(3) In the case of a plan whose assets are proposed to be invested in the pooled account or fund subsequent to the implementation of the arrangements and which has not authorized the arrangements in the manner described in paragraphs (i)(1) and (i)(2), the plan's investment in the account or fund shall be authorized in the manner described in paragraph (f);

(j) The Equity Owner, together with its affiliates (as defined in paragraph (a) of section III), does not own at the time of the execution of a securities lending transaction on behalf of a plan by the Equity Owner (i.e., in its capacity as Owner Lending Agent) through EquiLend or at the time of the purchase, or commencement of licensing, of data and/or analytical tools by the plan, more than 20% of:

(1) If EquiLend is a corporation, including a limited liability company taxable as a corporation, the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of EquiLend, or

(2) If EquiLend is a partnership, including a limited liability company taxable as a partnership, the capital interest or the profits interest of EquiLend;

(k) Any information, authorization, or termination of authorization may be provided by mail or electronically; and

(l) No Equity Owner Plan, as defined in section III(e) below, will participate in the Platform, other than through a Commingled Investment Fund in which the aggregate investment of all Equity Owner Plans at the time of the transaction constitutes less than 20% of the total assets of such fund. Notwithstanding the foregoing, this prohibition shall not apply to the participation by an Equity Owner Plan as of the date that the aggregate loan balance of all securities lending transactions entered into through EquiLend by all participants outstanding on such date (excluding transactions entered into on behalf of Equity Owner Plans) is equal to or greater than $10 billion; provided that if such aggregate loan balance is later determined to be less than $10 billion, no additional participation by an Equity Owner Plan (other than through a Commingled Investment Fund) shall occur until such time as the $10 billion threshold amount is again met.

Section III. Definitions

For purposes of this exemption:

(a) An ''affiliate'' of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term ''authorizing fiduciary'' means, with respect to an Owner Lending Agent, a plan fiduciary who is unrelated to, and independent of, such Owner Lending Agent. In this regard, an authorizing fiduciary will not be considered independent of an Owner Lending Agent if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Owner Lending Agent; or

(2) Such fiduciary directly or indirectly receives any compensation or other consideration from the Owner Lending Agent or an affiliate for his or her own personal account in connection with any securities lending transaction described herein.

For purposes of section II, no Equity Owner or any affiliate may be an authorizing fiduciary. Notwithstanding the foregoing, the requirements for consent by an authorizing fiduciary with respect to participation in the Platform, and the annual right of such fiduciary to terminate such participation, shall be deemed met to the extent that the Owner Lending Agent's proposed utilization of the services of EquiLend on behalf of a plan for securities lending has been approved by an order of a United States district court.

(c) The term ''Owner Lending Agent'' means a fiduciary of a plan acting as securities lending agent in connection with loans of plan assets that are securities.

(d) The term ''Equity Owner'' means an entity that either directly or through an affiliate owns an equity ownership interest in EquiLend.

(e) The term ''Equity Owner Plan'' means an employee benefit plan, as defined under section 3(3) of the Act, which is established or maintained by an Equity Owner of EquiLend, as defined in section III(d) above, as an employer of employees covered by such plan, or by its affiliate.

(f) The terms ''employee benefit plan'' and/or ''plan'' means:

(1) An ''employee benefit plan'' within the meaning of section 3(3) of the Act subject to Part 4 of Subtitle B of Title I of the Act,

(2) A ''plan'' (within the meaning of section 4975(e)(1) of the Code) subject to section 4975 of the Code, or

(3) The Federal Thrift Savings Fund.

Summary of Facts and Representations

1. EquiLend is a Delaware limited liability company established on May 16, 2001. As of October 17, 2001, the Equity Owners of EquiLend were as follows: Barclays California Corporation; Bear Stearns Securities Corp.; JP Morgan Strategic Securities Lending Corp. (a wholly owned subsidiary of The Chase Manhattan Bank); LB I Group Inc. (a wholly owned subsidiary of Lehman Brothers Inc.); Merrill Lynch, Pierce, Fenner & Smith Inc.; SSB Investments, Inc. (a wholly owned subsidiary of State Street Corporation); Strategic Investments I, Inc. (a wholly owned subsidiary of Morgan Stanley Dean Witter & Co.); The Goldman Sachs Group, Inc.; Northern Trust Corporation and UBS (USA) Inc., or affiliates of the foregoing entities. The applicant represents that, as of October 17, 2001, each Equity Owner owned 10 percent of EquiLend.

2. EquiLend intends to provide the Platform, a common electronic platform for the negotiation of securities lending and borrowing transactions.[8] The applicant represents that securities lending transactions involving the use of the Platform will not change the fundamental nature of how securities lending transactions are currently conducted. In this regard, the applicant states that most securities owners use a custodian bank, asset manager, or non-custodian lending agent to lend securities. The lending agent is typically responsible for, among other things, identifying borrowers, negotiating loan transactions, maintaining the appropriate records, marking to market all outstanding loans, ensuring the maintenance of collateral, and monitoring the delivery and control of the collateral.

The applicant represents that the Platform will provide a tool for lending agents to fulfil the above-mentioned responsibilities. In this regard, the Platform will include:

(A) An interactive screen;

(B) Screens for trade negotiations, auctions, auto-borrowing, rate posting, loan returns, recalls by lenders, and inventory broadcasts (posting of securities available for lending);

(C) Additional services such as the comparison of a transaction as reflected on lender and borrower books with the underlying contract and the identification of the differences between lender and borrower records, including mark to market comparisons and fee billing comparisons;

(D) The disclosure of the identity of counterparties to a transaction whereby members will have the ability to direct trades and control inventory broadcasts;

(E) The reflection of agreed transaction terms on a shared electronic trade ticket in a form for automated input to members' systems; and

(F) The creation of securities lending indices to assist in the benchmarking of the performance of securities lending agents.

3. The applicant states that, in providing these services, EquiLend will not be a principal in any securities lending transaction and will not guarantee any transaction executed through the Platform. In addition, the applicant states that employee benefit plans will not pay any fees to EquiLend in connection with securities lending transactions conducted through the use of the Platform. In this regard, the fees charged by EquiLend will be paid by, and will be the same for, securities lending agents and securities borrowers.

The fees charged by EquiLend are expected to include an annual fee and a one-time initiation fee; both of which will be structured on a tiered basis to allow for the participation in EquiLend by entities of varying sizes. Each level of the annual fees will entitle the member to a certain number of transactions and, thereafter, excess transactions will be subject to additional charges. The applicant represents that, although the Equity Owners will pay the same annual fees as non-owners, no such owner will pay the initiation fee.

4. The applicant states that, in addition to compliance with the terms of this proposed exemption, lenders and borrowers utilizing EquiLend services will remain responsible for compliance with other relevant laws and exemptions. In this regard, each securities lending transaction involving the use of the Platform by an Equity Owner as Owner Lending Agent will remain subject to all relevant provisions of the Act, the Code, and FERSA, as well as any applicable individual or class exemption (including but not limited to PTEs 81–6 and 82–63). In the event that a particular securities lending transaction does not comply with any applicable law and/or exemption, the relief contained in this exemption, if granted, will no longer be available with respect to such transaction.

5. The applicant anticipates that many of the entities currently conducting securities lending and borrowing transactions, including banks, broker-dealers and investment managers, will become members of EquiLend. The applicant anticipates that an entity participating in EquiLend and/or its Platform must, among other things:

(A) Be qualified in its jurisdiction to engage in securities lending transactions through EquiLend and be subject to an appropriate level of regulatory supervision (as determined by EquiLend);

(B) Execute a ''User Agreement'' which shall set forth the terms and conditions for access to, and use of, EquiLend's platform and which shall contain appropriate representations, warranties and indemnities from the participant, including those typically provided by users of electronic trading platforms; and

(C) Have the ability to pay all applicable EquiLend fees;

(D) Have the ability to originate a certain number of loans per month having a certain aggregate US dollar nominal value (which number and nominal value will be set prior to EquiLend's launch at levels designed to ensure that the applicant is a legitimate participant in the securities lending marketplace); and

(E) In order to remain a member in good standing, meet or exceed the levels described in (D) of this paragraph. The applicant notes that no Equity Owner Plan will participate in the Platform except to the extent that such Plan participates in a commingled fund having less than 20% of its assets comprised of one or more Equity Owner Plans.

6. The applicant represents that an Equity Owner may be a party to transactions involving EquiLend sales

[8] The proposed exemption does not provide relief under Section I from section 406(a) of the Act with respect to the use of the Platform on behalf of a plan by a lending fiduciary which is not an Equity Owner. In this regard, based on the representations made by the applicant, any relief from section 406(a) that may be necessary in such a situation is provided by the statutory exemption for the provision of services to a plan by a party in interest contained in section 408(b)(2) of the Act.

and/or services. In this regard, each Equity Owner may conduct securities lending transactions on behalf of a plan, in its capacity as an Owner Lending Agent, through EquiLend to the extent that such Equity Owner does not own more than 20% of EquiLend. The applicant represents that plans will not incur any incremental cost as a result of an Owner Lending Agent conducting such transactions through EquiLend.

The applicant states that to the extent an Owner Lending Agent lends plan-owned securities through EquiLend, plan participants will be adequately protected. In this regard, the applicant represents that prior to such an arrangement, each Owner Lending Agent will disclose to a plan's authorizing fiduciary (who is independent of the Owner Lending Agent and EquiLend) that such Owner Lending Agent intends to participate in the Platform. In addition, each Owner Lending Agent will disclose all of the information that the Owner Lending Agent believes is necessary for the authorizing fiduciary to determine whether the arrangement should be approved.[9] Thereafter, the applicant states, the plan's authorizing fiduciary must authorize the Owner Lending Agent's use of the Platform to lend securities on behalf of such plan. This authorization may be terminated by the authorizing fiduciary, the applicant states, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent, or (ii) five business days.[10]

7. In addition to providing the Platform discussed above, EquiLend intends to sell and/or license data. In this regard, the applicant represents that such data: (A) Will be historical in nature and will relate to transactions proposed or occurring on the system; or (B) will be derived from current and historical data utilizing statistical or computational techniques. EquiLend also intends to sell or license certain analytical tools. Such analytical tools, the applicant states, will be objective statistical or computational tools that will permit users to use data provided to evaluate securities lending activities.

The applicant represents that EquiLend seeks to sell and/or license such data and tools to various types of entities, including employee benefit plans. In this regard, the applicant states that, if this proposed exemption is granted, to the extent EquiLend sells or licenses data and/or analytical tools to a plan with respect to which EquiLend is a party in interest, the terms of such sale or licensing will be at least as favorable to such plan as the terms associated with an arm's-length transaction involving unrelated parties. In addition, the applicant represents that if EquiLend sells or licenses a product to a plan with respect to which an Equity Owner acts as an Owner Lending Agent, such sale or licensing will be authorized in advance by a fiduciary who is independent of both EquiLend and the Owner Lending Agent upon such fiduciary's receipt from the Owner Lending Agent of all of the information that the Owner Lending Agent believes is necessary for the authorizing fiduciary to approve the purchase or license.

8. The applicant represents that the proposed exemption, if granted, will benefit plans. In this regard, the applicant states that the use of the Platform by lending fiduciaries will enable plans to, among other things, communicate with multiple borrowers, devise and implement more efficient lending strategies, and monitor ongoing securities loan activities. In turn, affected plans may benefit from more efficient pricing, reduced execution costs, streamlined front and back-office activities, less failed trades and more on-going information regarding lending activities. In addition, according to the applicant, if EquiLend sells or licenses data related to securities lending activities and provides related analytical tools to plans, plans will have access to information that will permit the enhanced evaluation of the performance of lending agents and the returns on lending portfolios.

9. In summary, the applicant represents that the requirements of section 408(a) of ERISA will be met with respect to the sale or licensing of certain data and/or analytical tools to employee benefit plans by EquiLend since: the terms of any such sale or licensing will be at least as favorable to a plan as the terms generally available in an arm's-length transaction involving an unrelated party; any data sold/licensed to a plan will be current and historical data related to transactions proposed or occurring on the Platform; and any tool sold/licensed will be objective and designed to permit the evaluation of securities lending transactions.

In addition, the applicant represents that the requirements of section 408(a) of ERISA will be met with respect to: (1) The participation in the Platform by an Equity Owner, in its capacity as an Owner Lending Agent; and (2) the sale or licensing of certain data and/or analytical tools by EquiLend to a plan for which an Equity Owner acts as a securities lending agent because, among other things:

(A) In the case of participation in the Platform on behalf of a plan, to the extent applicable the procedures regarding the securities lending activities conform to the provisions of PTE 81–6, PTE 82–63, and/or any applicable individual exemption;

(B) None of the fees imposed by EquiLend for securities lending transactions conducted through the use of the Platform at the direction of an Owner Lending Agent will be charged to a plan;

(C) Each securities lender and securities borrower participating in a securities lending transaction through EquiLend will be notified by EquiLend as to its responsibilities with respect to compliance, as applicable, with the Act, the Code, and FERSA;

(D) Each Equity Owner will provide prior written notice to its plan clients of its intention to participate in EquiLend;

(E) With certain exceptions described above, the arrangement pursuant to which the Equity Owner utilizes the services of EquiLend on behalf of a plan:

(1) Is subject to the prior written authorization of an authorizing fiduciary;

(2) May be terminated by the authorizing fiduciary, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Equity Owner, or (ii) five business days;

(F) With certain exceptions described above, each purchase or license of a securities lending-related product from EquiLend is subject to the prior

[9] The Department notes that the Act's general standards of fiduciary conduct also would apply to the proposed service and compensation arrangements. In this regard, section 404 requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent plan fiduciary must act prudently with respect to: (1) The decision to enter into an above-described arrangement; and (2) the negotiation of the terms of such arrangement including any payment of compensation. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed service and compensation arrangements, to fully understand the extent of the services to be provided, the fee structure and the risks associated with these types of arrangements following disclosure by the service provider of all relevant information. In addition, the Department notes that such plan fiduciaries are responsible for periodically monitoring the services provided.

[10] However, with respect to any plan for which the authorizing fiduciary has previously given written authorization to the Owner Lending Agent pursuant to PTE 82–63, the applicant requests that such authorizing fiduciary be deemed to have given the required authorization unless such authorizing fiduciary objects in writing to participation in the Platform to the Owner Lending Agent within 30 days after disclosure of the information described above.

authorization of an authorizing fiduciary;

(G) The Equity Owner will furnish each authorizing fiduciary with any reasonably available information which the Equity Owner reasonably believes to be necessary to determine whether such authorization should be made or renewed; and

(H) The Equity Owner, together with its affiliates, does not own at the time of the execution of a securities lending transaction on behalf of a plan by the Equity Owner through EquiLend or at the time of the purchase, or commencement of licensing, of data and/or analytical tools by the plan, more than 20% of EquiLend.

Notice to Interested Persons: The applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 35 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Morgan Stanley Dean Witter & Co., Located in New York, New York

[Exemption Application No.: D–11048]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures as set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[11]

Section I—Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 13, 2001, to:

(a) The lending of securities by an employee benefit plan, including a commingled investment fund holding assets of such plan(the Plan(s)) with respect to which Morgan Stanley Dean Witter & Co. (Morgan Stanley) or any of its affiliates is a party in interest, under certain exclusive borrowing arrangements with:

(1) Morgan Stanley;

(2) Morgan Stanley & Co. Incorporated (MS&Co); MS Securities Services Inc. (MSSSI); and any other affiliate of Morgan Stanley that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer (collectively, the MS US Broker-Dealers);

(3) Morgan Stanley & Co. International Limited (MSIL), which is subject to regulation by the Financial Services Authority (FSA)in the United Kingdom;[12]

(4) Morgan Stanley Japan Limited (MSJL), which is subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan; and

(5) Any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the FSA in the United Kingdom or which is subject to regulation by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan;[13] and

(b) The receipt of compensation by Morgan Stanley or any of its affiliates in connection with securities lending transactions; provided that for the transactions, set forth in section I(a) and (b), above, the conditions set forth in section II, below, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over such Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to such Plan (including a fiduciary) solely by reason of providing services to such Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with the Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by the Plan to the Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower an exclusive right to borrow certain securities, the Plan receives from such Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower pledges cash collateral, all the earnings generated by such cash collateral shall be returned to such Borrower; provided that such Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by such Plan, or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower pledges non-cash collateral, all earnings on the non-cash collateral shall be returned to such Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee, and together with the Shared Earnings Compensation, is referred to as the Transaction Lending Fee). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against the Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of such Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change,

[11] For the purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[12] As of December 1, 2001, the FSA replaced the United Kingdom Securities and Futures Authority.

[13] Each affiliated foreign broker-dealer is referred to herein, individually, as a Foreign Borrower or collectively, as Foreign Borrowers. The Foreign Borrowers together with Morgan Stanley and the MS US Broker-Dealers are referred to, herein, collectively as Borrowers or Applicants, and individually, as the Borrower.

prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan receives from such Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank, other than the Borrower or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (as amended or superseded)(PTE 81–6).[14]

Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or custodian of the Plan.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent (102%) of the market value of the loaned securities on the close of business on the day preceding the day of the loan and, if the market value of the collateral at any time falls below 100 percent (100%) (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent (102%). The level of the collateral is monitored daily by the Plan or its designee, which may be Morgan Stanley or any of its affiliates which provides custodial or trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The applicable Borrowing Agreement shall give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether such Plan should enter into or renew the Borrowing Agreement.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that such Plan would have received (net of tax withholdings)[15] had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a *pro-rata* portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five (5) business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, the United Kingdom and/or Japan, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has

[14] 46 FR 7527, Jan. 23 1981, as amended at 52 FR 18754, May 19, 1987). PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

[15] The Department notes the Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of the notice of proposed exemption, and a copy of the final exemption, if granted, is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[16]

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in this paragraph, so that an independent Plan fiduciary may monitor such transactions with the Borrowers. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a registered broker-dealer subject to regulation by the FSA in the United Kingdom or is subject to regulation in Japan by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act which provides foreign broker-dealers a limited exception from United States registration requirements;

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 (as amended or superseded) from time to time;

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 C.F.R. 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

(s) The Borrower maintains, or causes to be maintained, within the United States for a period of six (6) years from the date of each transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Morgan Stanley and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized to examine the trade secrets of Morgan Stanley or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An ''affiliate'' of a person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) Any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

(b) The terms, ''Foreign Borrower'' or ''Foreign Borrowers,'' includes MSIL and any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the FSA in the United Kingdom, and MSJL, and any broker-dealer that, now or in the future, is an affiliate of Morgan

[16] The Department notes the Applicants' representation that, under the proposed exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.,* the Applicants will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Applicants or their affiliates may monitor the level of collateral and the value of the loaned securities.

Stanley which is subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan.

(c) The term, ''Borrower,'' includes Morgan Stanley, MS&Co, MSSSI, the Foreign Borrowers, and any other affiliate of Morgan Stanley that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer.

Effective Date: This proposed exemption, if granted, will be effective as of November 11, 2001, the date the application was received by the Department.

Summary of Facts and Representations

1. Morgan Stanley, a publicly traded Delaware corporation and a registered investment adviser, is a full-line investment services firm. As of November 30, 2000, Morgan Stanley had approximately $426.8 billion in total assets and $19.3 billion in stockholders' equity.

Morgan Stanley has several affiliates which are broker-dealers. MS&Co, a subsidiary of Morgan Stanley, is a financial services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and is a member of the National Association of Securities Dealers (NASD). MS&Co is incorporated under the laws of the State of Delaware and is registered with and regulated by the SEC as a U.S. broker-dealer under section 15 of the 1934 Act. As of May 31, 2001, MS&Co had approximately $299 billion in assets.

MSSSI, a subsidiary of MS&Co, is a financial services company which is incorporated under the laws of the state of Delaware and is registered with and regulated by the SEC as a broker-dealer under the 1934 Act, as amended, and is also a member of the NASD. As of November 20, 2000, MSSSI had approximately $47 billion in assets.

The Foreign Borrowers and their respective regulating entities, are as follows: (a) MSIL, located in London and subject to regulation by the FSA in the United Kingdom, and (b) MSJL, located in Tokyo, and subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan. As of November 30, 2000, MSIL had approximately $194 million in assets. As of March 31, 2001, MSJL Tokyo Branch had approximately ¥5,560 billion in assets.

2. The Borrowers, acting as principal, actively engage in the borrowing and lending of securities. The Borrowers utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. The Applicants represent that in the United States, as described in the Federal Reserve Board's Regulation T, borrowed securities are often used in short sales, for non-purpose loans to exempted borrowers, or in the event of a failure to receive securities that a broker-dealer is required to deliver.

The Applicants wish to enter into exclusive borrowing arrangements with Plans for which Morgan Stanley or any affiliate of Morgan Stanley may be an investment manager for the assets of such Plans that are unrelated to the assets involved in the transaction. Morgan Stanley or any of its affiliates may provide securities custodial services, trustee services, clearing and/or reporting functions in connection with securities lending transactions, or other services to such Plans.

3. The Applicants represent that although MSIL or any other foreign broker-dealer of Morgan Stanley in the United Kingdom will not be registered with the SEC, their activities are governed by the rules, regulations, and membership requirements of the FSA. In this regard, the Applicants state that these broker-dealers are subject to the FSA rules relating to, among other things, minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules, and books and records requirements with respect to client accounts. The Applicants represent that the rules and regulations set forth by the FSA and the SEC share a common objective—the protection of the investor by the regulation of the securities industry. The Applicants represent that the FSA rules require each firm which employs registered representatives or registered traders to have positive tangible net worth and to be able to meet its obligations as they may fall due, and that the FSA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition, to demonstrate capital adequacy, the Applicants state that the FSA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and record-keeping requirements. In this regard, required records must be produced at the request of the FSA at any time. The Applicants further state that the rules and regulations of the FSA for broker-dealers are backed up by potential fines and penalties as well as a comprehensive disciplinary system.

4. Japan has comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counter-parties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system.

5. The Applicants represent that in addition to the protections afforded by the FSA, the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, or the Osaka Stock Exchange, compliance by the Applicants with the requirements of Rule 15a–6 of the 1934 Act (and the amendments and interpretations thereof) will offer further protections to the Plans.[17] Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if: (a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company, or registered

[17] According to the Applicants, section 3(a)(4) of the 1934 Act defines ''broker,'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank.'' Section 3(a)(5) of the 1934 Act provides a similar exclusion for ''banks'' in the definition of the term, ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15a–6(b)(3) provides that the term, ''foreign broker-dealer,'' means ''any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the [1934] Act.'' Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term, ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, the Applicants are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term, ''major U.S. institutional investor,'' is defined as a person that is a U.S. institutional investor that has, or has under management, total assets in excess of $100 million or an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[18] The Applicants represent that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicants represent that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 [19] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to the transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating the terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); [20] and

(6) Participate in certain oral communications (*e.g.,* telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. The Applicants represent that, under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor.[21] (See April 9, 1997, No-Action Letter.)

6. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities (*e.g.,* from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. If the borrower deposits cash collateral, the lender invests the collateral, and the borrowing agreement may provide that the lender pay the borrower a previously-agreed upon amount or a rebate fee and keep the earnings on the collateral. If the borrower deposits government securities, the borrower is entitled to the earnings on its deposited securities and may pay the lender a lending fee. If the borrower deposits irrevocable bank letters of credit as collateral, the borrower pays the lender a fee as compensation for the loan of its securities. These fees, referred to above, as the Transaction Lending Fee, may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement.

7. The Borrowers request an exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which Morgan Stanley or any of its affiliates is a party in interest (including a fiduciary) solely by reason of providing services to such Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act. For each Plan, neither the Borrowers nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. The Applicants represent that because the Borrowers, by exercising their contractual rights under the proposed exclusive borrowing arrangements, will have discretion with respect to whether there is a loan of particular Plan securities to the Borrowers, the lending of securities to the Borrowers may be outside the scope of relief provided by PTE 81–6.[22]

8. For each Plan, the Borrowers will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of the Borrowers. Under the Borrowing Agreement, the Borrowers will have exclusive access for a specified period of time to borrow certain securities of the Plan pursuant to certain conditions. The form of the Borrowing Agreement to be used in foreign jurisdictions will reflect appropriate local industry or market standards.[23] The Borrowing Agreement

[18] Note that the categories of entities that qualify as ''major U.S. institutional investors'' has been expanded by a Securities and Exchange Commission No-action letter. See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997, (April 9, 1997 No-Action Letter).

[19] If it is determined that applicable regulation under the 1934 Act does not require Morgan Stanley or the Borrower to comply with Rule 15a–6, both entities will nevertheless comply with subparagraphs (a) and (b) of Representation 5.

[20] Under certain circumstances described in the April 9, 1997, No-Action Letter (*e.g.,* clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and Morgan Stanley or between a Plan and the Foreign Borrower. The Applicants note that in such situations, the U.S. registered broker-dealer will not be acting as principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[21] The term ''foreign associated person'' as defined in Rule 15a–6(b)(2) means any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the 1934 Act, of the foreign broker-dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under Rule 15a–6(a)(3).

[22] PTE 81–6 requires in part that neither the borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the plan assets involved in the transaction.

[23] For example, the form of the Borrowing Agreement to be used in the United Kingdom differs from the standard U.S. Borrowing Agreement. Under the form Borrowing Agreement

Continued

will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that the Borrowers pay all transfer fees and transfer taxes relating to the securities loans. The terms of each loan of securities by a Plan to a Borrower will be at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

9. The Borrowers may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

10. In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives an Exclusive Fee from the Borrower. If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan to Shared Earnings Compensation. If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a Lending Fee. The Lending Fee, together with the Shared Earnings Compensation, is called the Transaction Lending Fee.

The Transaction Lending Fee, if any, may be in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. For example, in addition to the Borrower paying different fees for different portfolios of securities (*i.e.*, the fee for a domestic securities portfolio may be different than the fee for a foreign securities portfolio), the Borrower may also pay different fees for securities of issuers in different foreign countries (i.e., there may be a different fee for German securities than for French securities). In addition, with respect to, for example, the French securities, there may be different fees for liquid securities than for illiquid securities.

Any change in, or a change in the method of determining, the Exclusive Fee or the Transaction Lending Fee that the Applicants pay to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

The Plan is entitled to the equivalent of all distributions made to holders of the borrowed securities during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities that the Plan would have received (net of tax withholdings in the case of foreign securities), had it remained the record owner of the securities.

11. By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan will receive from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by U.S. banks, or other collateral permitted under PTE 81–6 (as amended or superseded). Such collateral will be deposited and maintained in an account on behalf of the Plan which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or custodian of the Plan.

The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Plan, its independent fiduciary or its designee, which may be Morgan Stanley or any of its affiliates which provides custodial or trustee services in respect of the securities covered by the Borrowing Agreement for the Plan, will monitor the level of the collateral daily and, if the market value of the collateral on the close of a business day falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities at the close of business on such day, the Borrower will deliver additional collateral by the close of business on the following day to bring the level of the collateral back to at least 102 percent. The applicable Borrowing Agreement will give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

If the Borrower pledges cash collateral, the Plan invests the collateral, and all earnings on such cash collateral shall be returned to the Borrower; provided that the Borrowing Agreement may provide that the Plan receive Shared Earnings Compensation, which, as discussed above, may be a percentage of the earnings on the collateral which may be retained by the Plan or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral. The terms of the rebate fee for each loan will be at least as favorable to the Plan as those of comparable arm's length transactions between unrelated parties taking into account the exclusive arrangement, and will be based upon an objective methodology which takes into account several factors, including potential demand for the loaned securities, the applicable benchmark cost of fund indices (typically, the U.S. Federal Funds rate established by the U.S. Federal Reserve System (the Federal Funds), the overnight REPO [24] rate, or the like) and the anticipated investment return on overnight investments permitted by the independent fiduciary of the Plan.

If the Borrower pledges non-cash collateral, such as government securities or irrevocable bank letters of credit, the Borrower shall be entitled to the earnings on its non-cash collateral; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a Lending Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and

to be used in the United Kingdom, the Plan receives title to (rather than a pledge of or a security interest in) the collateral.

[24] An overnight REPO is an overnight repurchase agreement that is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by banks lending funds to each other).

may be different for different securities or different groups of securities subject to the Borrowing Agreement.

The Borrower will provide a monthly report to the independent fiduciary of the Plan which includes the following information. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

12. Before entering into a Borrowing Agreement, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement. Further, the Borrowing Agreement will contain a representation by the Borrower that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statements.

13. Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of the notice of proposed exemption and a copy of the final exemption, if granted, will be provided to the Plan, and the Borrower will inform the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.

14. With regard to those Plans for which Morgan Stanley or any of its affiliates provides custodial, trustee, clearing and/or reporting functions relative to securities loans, Morgan Stanley and a Plan fiduciary independent of Morgan Stanley and its affiliates will agree in advance and in writing to any fees that Morgan Stanley or any of its affiliates is to receive for such services. Such fees, if any, would be fixed fees (*e.g.,* Morgan Stanley or any of its affiliates might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services or to receive a stated dollar amount) and any such fee would be in addition to any fee Morgan Stanley or any of its affiliates has negotiated to receive from any such Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for Morgan Stanley or any of its affiliates to provide such functions relative to securities loans to the Borrowers will be terminable by the Plan within five (5) business days of the receipt of written notice without penalty to the Plan, except for the return to the Borrowers of a *pro-rata* portion of the Exclusive Fee paid by the Borrowers to the Plan, if the Plan has also terminated its exclusive borrowing arrangement with the Borrowers.

15. The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty. Upon termination of any securities loan, the Borrower will deliver securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five (5) business days of written notice of termination or the customary settlement period for such securities.

16. In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans or failure by the Borrower to properly indemnify the Plan.

17. Except as provided herein, all the procedures under the Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, the United Kingdom and/or Japan, as appropriate. In addition, in order to ensure that the independent fiduciary representing a Plan has the experience, sophistication, and resources necessary to adequately review the Borrowing Agreement and the fee arrangements thereunder, only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers; provided, however, that—

(a) In the case of the Related Plans, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(b) In the case of the Unrelated Plans, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

18. It is represented that the lending of securities is an attractive investment opportunity because it enables the owner of the securities to earn additional income from the securities while continuing to receive the dividends, interest payments, and other

distributions made with respect to the loaned securities. The Applicants represent that the opportunity for the Plans to enter into exclusive borrowing arrangements with the Borrowers under the flexible fee structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the volume of securities lent and the return on such securities.

19. The proposed transaction contain safeguards sufficient to protect the Plans and the participants and beneficiaries of such Plans. In this regard, in addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(i) Such Foreign Borrower is a registered broker-dealer subject to regulation by the FSA or the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, or the Osaka Stock Exchange;

(ii) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act which provides foreign broker-dealers a limited exception from United States registration requirements;

(iii) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 from time to time;

(iv) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(v) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint a Process Agent for service of process in the United States, which may be an affiliate;

(3) Consent to the service of process on the Process Agent; and

(4) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

20. In addition to the protections cited above, the Borrower will maintain, or cause to be maintained, within the United States for a period of six years from the date of a transaction, such records as are necessary to enable the Department and other persons (as specified herein in section II(t)(1)) to determine whether the conditions of the exemption have been met.

21. The requested exemption is administratively feasible because the conditions to which the Applicants have consented to be subject are comparable to those described in PTE 81–6. The proposed exemption requires the review and approval of the borrowing arrangement by a fiduciary of the Plan that is independent of Morgan Stanley and its affiliates and does not require any further action by the Department.

22. In summary, the Applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Borrower will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan;

(b) The Plans will be permitted to lend to the Borrower, a major securities borrower who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities;

(c) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower will pay the Plan the Exclusive Fee, which as discussed above may be either (i) a flat fee (which may be a percentage of the value of the total securities subject to the Borrowing Agreement), (ii) a percentage of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii);

(d) Any change in the Exclusive Fee or Shared Earnings Compensation that the Borrower pays to the Plan with respect to any securities loan will require the prior written consent of the independent fiduciary, except that consent will be presumed where the Exclusive Fee or Shared Earnings Compensation changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) The Borrower will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to the Borrower;

(f) The collateral posted with respect to each loan of securities to the Borrower initially will be at least 102 percent of the market value of the loaned securities and will be monitored daily by the independent fiduciary;

(g) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, except for the return to the Borrower of a *pro-rata* portion of the Exclusive Fee paid by the Borrower to the Plan, and whereupon the Borrower will return any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five (5) business days of written notice of termination or the customary settlement period for such securities;

(h) Neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan;

(i) The minimum Plan size requirement (as specified in section II(o)) will ensure that the Plans will have the resources necessary to adequately review and negotiate all aspects of the exclusive borrowing arrangements; and

(j) All the procedures will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as applicable securities laws of the United States, the United Kingdom and/or Japan, as appropriate.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the proposed exemption are: (1) The independent fiduciaries of the Plans that the Applicants can identify as being currently interested in lending securities to the Borrowers under circumstances described in the proposed exemption; and (2) Plans which may be potentially interested in the proposed transactions but cannot be identified at the time the Notice is published in the **Federal Register**. These two classes of interested persons will be notified as follows.

With respect to Plans that the Applicants can identify as being currently interested in lending securities to the Borrowers, the Applicants represent that they will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement, described at 29 CFR 2570.43(b)(2), to the independent fiduciary of such Plan either by hand delivery or first class mailing, within fifteen (15) days following the publication of the Notice in the **Federal Register**. In addition, the Applicants represent that they will provide the independent fiduciary of such Plans a copy of the final exemption, if granted, within fifteen (15) days following the

publication of such final exemption in the **Federal Register**.

With respect to the Plans which may be potentially interested in the proposed transactions but cannot be identified at the time the Notice is published in the **Federal Register**, the only practical means of notifying the fiduciaries of such Plans of the pendency of the Notice is by publication of the Notice in the **Federal Register**.

The Applicants also represent that a copy of the Notice and a copy of the final exemption, if granted, will be provided by hand delivery or first class mailing to the independent fiduciary of a Plan prior to entering into any exclusive borrowing arrangement with such Plan involving securities lending covered by this exemption.

Written comments and/or requests for a hearing on the proposed exemption must be received by the Department on or before 45 days from the date following publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of March, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–7520 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–29–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution; Agency Information Collection Activities: Submission for OMB Review; Comment Request; Program Evaluation Instruments for Five of the Institute's Program Areas

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act and supporting regulations, this document announces that the U.S. Institute for Environmental Conflict Resolution (the Institute), part of the Morris K. Udall Foundation, has forwarded to the Office of Management and Budget (OMB) the following five Information Collection Requests (ICRs): (1) Program Evaluation Instruments—Environmental Conflict Resolution Services, (2) Program Evaluation Instruments—Conflict Assessment Services, (3) Program Evaluation Instruments—National Roster of Environmental Dispute Resolution and Consensus Building Professionals, (4) Program Evaluation Instruments—Environmental Conflict Resolution Training, (5) Program Evaluation Instruments—Meeting Facilitation. Each ICR describes the authority and need for program evaluation, the nature and use of the information to be collected, the expected burden and cost to respondents and the Institute, and how the evaluation results will be made available. The ICRs also contain the specific questionnaires that will be used to collect the information for each program area. Approval is being sought for each ICR separately, and information collection will begin for each program area once the respective ICR has been approved by OMB. The Institute published a **Federal Register** notice on December 26, 2001, at 66 FR 66455, to solicit public comments for a 60-day period. The Institute received three comments. The comments and the Institute's responses are included in the ICRs. The purpose of this notice is to allow an additional 30 days for public comments regarding these ICRs.

DATES: Comments must be submitted on or before April 29, 2002.

ADDRESSES: Direct comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Amy Farrell, Desk Officer for The Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution. *Amy_L._Farrell@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Technical details of the Institute's evolving program evaluation system are contained in a December 2001 draft report entitled *Applying Program Evaluation Methods at the U.S. Institute for Environmental Conflict Resolution.* Paper copies of this report can be obtained by contacting the Institute; an electronic copy can be downloaded from the Institute's Web site: *www.ecr.gov/techdoc.htm.* For further information or a copy of the ICR, contact: Dale Keyes, Senior Program Manager, U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701. Fax: 520–670–5530. Phone: 520–670–5653. E-mail: *keyes@ecr.gov.*

SUPPLEMENTARY INFORMATION:

A. Title for the Collection of Information

Program Evaluation Instruments for Five of the U.S. Institute for Environmental Conflict Resolution's Program Areas

B. Potentially Affected Persons

You are potentially affected by this action if you are or could be a dispute resolution professional (in particular, if

you are a member of the National Roster of Environmental Dispute Resolution and Consensus Building Professionals), a user of the National Roster of Environmental Dispute Resolution and Consensus Building Professionals, a member of an organization that requests conflict assessment or environmental dispute resolution and consensus building services from the Institute, a party to an environmental consensus building or dispute resolution case for which the Institute provides services, an instructor or participant in an Institute training course, or an attendee at a meeting for which the Institute provides facilitation services.

C. Questions To Consider in Making Comments

The U.S. Institute for Environmental Conflict Resolution requests your comments to any of the following questions related to collecting information as part of its program evaluation system:

(1) Is the proposed program evaluation system and the associated ''collection of information'' necessary for the proper performance of the functions of the agency, including whether the information will have practical utility?

(2) Is the agency's estimate of the time spent completing the questionnaires for each program area (''burden of the proposed collection of information'') accurate, including the validity of the methodology and assumptions used?

(3) Can you suggest ways to enhance the quality, utility, and clarity of the information collected?

(4) Can you suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology?

D. Abstract

The U.S. Institute for Environmental Conflict Resolution plans to collect information from members and users of its National Roster of Environmental Dispute Resolution and Consensus Building Professionals, environmental dispute resolution professionals under contract with the Institute, users of its services, and participants in its programs. Responses to the collection of information (the questionnaires) will be voluntary and anonymous except for environmental dispute resolution professions under contract with the Institute, for whom responding will be a contractual obligation.

Background Information: U.S. Institute for Environmental Conflict Resolution

The U.S. Institute for Environmental Conflict Resolution was created in 1998 by the Environmental Policy and Conflict Resolution Act (Pub. L. 105–156). The Institute is located in Tucson, Arizona and is part of the Morris K. Udall Foundation, an independent agency of the executive branch of the federal government. The Institute's primary purpose is to provide impartial, non-partisan assistance to federal and non-federal parties. The Institute provides assistance in seeking agreement or resolving disputes through use of mediation and other collaborative, non-adversarial means regarding environmental, natural resources, and public lands issues involving a federal interest. The Institute accomplishes most of its work by partnering or contracting with, or referral to, experienced practitioners.

The Need for and Proposed Use of the Information Collected as Part of the Institute's Program Evaluation System

To comply with the Government Performance and Results Act (Pub. L. 103–62), the U.S. Institute for Environmental Conflict Resolution, as part of the Morris K. Udall Foundation, is required to produce an *Annual Performance Plan,* linked directly to the goals and objectives outlined in the Institute's five-year Strategic Plan. The Institute is also required to produce an *Annual Performance Report,* evaluating progress toward achieving its performance commitments. The Institute is currently developing a program evaluation system to gather and analyze information needed to assist in producing its Annual Performance Report.

The Institute is committed to establishing, achieving, and maintaining a national standard of excellence in all its programs, products, and services. To do so, the Institute requires high quality information concerning effectiveness of its various initiatives. Systematic and ongoing monitoring of program outcomes will allow the Institute to perform a variety of tasks, including giving individual project and program managers, as well as the Institute's management, the ability to accurately assess and report on program and project achievements. The new evaluation system has been carefully designed to support efficient and economical generation, analysis and use of this much-needed information, with an emphasis on program feedback, learning and improvement.

Primary audiences for results from the Institute's program evaluation system include members of its program staff and management, who will use the information in decision-making regarding program operation and directions, and oversight bodies such as the Udall Foundation Board of Trustees and OMB. Secondary audiences will likely include other federal agencies, practitioners in the field, researchers, and members of the public. The Institute will use the information and analysis generated by its program evaluation system for a variety of purposes. In addition to aiding improvements to the design and operation of Institute projects and programs, periodic performance reporting, and annual evaluations of personnel performance; the evaluation results will be used to illuminate what factors most influence successful outcomes from environmental conflict resolution (ECR) efforts in specific situations. Ultimately, this information should aid further development of best practices for the field of .ECR.

The Institute is exploring with several other federal agencies how its program evaluation system can be of use to these agencies' program evaluation needs. The broader use of similar data collection instruments and consistent data collection and analysis techniques may provide cost savings to other agencies and accelerate the rate at which each agency reviews and improves effective performance of conflict resolution processes.

E. Burden Statement

Each of the five ICRs covered by this **Federal Register** notice contains estimates of the time and financial burden imposed on respondents to the requests for information. 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 purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information and transmitting information. With respect to the information requests included in the five ICRs (a total of 20 questionnaires), burden includes time spent to: (1) Read letters of introduction and follow-up letters (either in hard copy or on the Institute's Web site) requesting that the questionnaires be completed and submitted, (2) reading instructions, answering questions, and submitting the

questionnaires; and (3) for a few questionnaires, accessing notes or other information to answer questions. Burden estimates are presented in terms of hours and imputed costs based on the estimated value of respondents' time. No start-up or capital costs for respondents are anticipated, even for questionnaires available electronically (these respondents will be members of the Institute's National Roster of Environmental Dispute Resolution and Consensus Building Professionals and will use the same computer equipment to access the questionnaires as was used to apply for Roster membership, or can request hard copies of the questionnaires and submit them via the US Postal Service).

Following is a summary of the burden estimates:

ECR Services Program Area

Type of Respondents: facilitators/mediators and participants in the Institute's ECR cases.

Estimated Number of Potential Respondents (annual average for three years): 1,170.

Proposed Frequency of Response: once per case for facilitators/mediators, once per case for attorneys, twice per case for parties.

Estimated Average Time per Respondent: 21 minutes.

Estimated Total Cost per Respondent: $10.39.

Conflict Assessment Services

Type of Respondents: facilitators/mediators and members of initiating organizations in the Institute's conflict assessments.

Estimated Number of Potential Respondents (annual average for three years): 220.

Proposed Frequency of Response: once per assessment.

Estimated Average Time per Respondent: 11 minutes.

Estimated Total Cost per Respondent: $7.36.

National Roster of Dispute Resolution and Consensus Building Professionals

Type of Respondents: members and users of the National Roster.

Estimated Number of Potential Respondents (annual average for three years): 385.

Proposed Frequency of Response: once per year for members, once per use event for users.

Estimated Average Time per Respondent: 18 minutes.

Estimated Total Cost per Respondent: $10.09.

ECR Training

Type of Respondents: instructors and participants in the Institute's training courses.

Estimated Number of Potential Respondents (annual average for three years): 415.

Proposed Frequency of Response: twice per course for instructors, three times per course for participants.

Estimated Average Time per Respondent: 39 minutes.

Estimated Total Cost per Respondent: $17.79.

Meeting Facilitation

Type of Respondents: attendees at the Institute's facilitated meetings.

Estimated Number of Potential Respondents (annual average for three years): 500.

Proposed Frequency of Response: once per meeting.

Estimated Average Time per Respondent: 5 minutes.

Estimated Total Cost per Respondent: $2.25.

F. Other Information

Each ICR also contains information on the following topics: development of the Institute's program evaluation system, confidentiality of information, estimates of costs to the Federal Government for collecting, processing, storing and using the requested information, and issues related to analysis of the information.

(Authority: 20 U.S.C. Sec. 5601–5609)

Dated: March 25, 2002.

Christopher L. Helms,

Executive Director, Morris K. Udall Foundation.

[FR Doc. 02–7577 Filed 3–28–02; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Music Section (American Jazz Masters Fellowships category) to the National Council on the Arts will be held on April 18, 2002 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, (Room 527) Washington, DC, 20506. A portion of this meeting, from 11:15 a.m. to 12:00 p.m., will be open to the public for policy discussion. The remaining portion of this meeting, from 10:00 a.m. to 11:15 a.m., will be closed.

The closed portion of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: March 25, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–7586 Filed 3–28–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #52

Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on April 23, 2002 from 10:45 a.m. to approximately 1:00 p.m. The meeting will be held in the Hubbard Hall Board Room of the National Geographic Society, 16th and M Streets, NW., Washington, DC 20036–4688.

The Committee meeting will begin at 10:45 a.m. with a welcome and introductions by Adair Margo, Committee Chairman. Agency heads Robert Martin (Director, Institute of Museum and Library Services), Bruce

Cole (Chairman, National Endowment for the Humanities), and Eileen Mason (Acting Chairman, National Endowment for the Arts) will present reports, and Henry Moran, Executive Director of the President's Committee on the Arts and the Humanities will then present an Executive Director's update. This will be followed by general discussion and closing remarks from the Committee Chairman.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c) (4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Georgianna Paul of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Paul.

If you need special accommodations due to a disability, please contact Ms. Paul through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: March 25, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–7587 Filed 3–28–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–390–CivP; 50–327 CivP; 50–328–CivP; 50–259–CivP; 50–260–CivP; 50–296–CivP; ASLBP No. 01–791–01–CivP; EA 99–234]

Atomic Safety and Licensing Board; Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 & 2; Browns Ferry Nuclear Plant, Units 1, 2 & 3); Evidentiary Hearing

March 25, 2002.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Richard F. Cole and Ann Marshall Young.

This proceeding involves a proposed civil penalty of $110,000, sought to be imposed by the NRC Staff on the Tennessee Valley Authority (TVA) for an alleged violation of NRC's employee-protection requirements set forth in 10 CFR 50.7, based upon the asserted discrimination against a former employee for engaging in protected activities. In response to an Order Imposing Civil Monetary Penalty, published at 66 FR 27,166 (May 16, 2001), TVA on June 1, 2001, filed a timely request for a hearing. On June 26, 2001, an Atomic Safety and Licensing Board, consisting of Dr. Richard F. Cole, Ann Marshall Young, and Charles Bechhoefer, who serves as Chairman, was established to preside over this proceeding. 66 FR 34,961 (July 2, 2001).

By Memorandum and Order dated June 28, 2001, the Licensing Board granted TVA's request for a hearing and, on the same date, issued a Notice of Hearing. 66 FR 35,467–35,468 (July 5, 2001). Parties to this proceeding are TVA and the NRC Staff. As set forth in the Order Imposing Civil Monetary Penalty, 66 FR at 27,167, issues to be considered are (a) whether the Licensee violated the Commission's requirements, as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, dated February 7, 2000 (NOV); and, if so, (b) whether, on the basis of such violation, the Order Imposing Civil Monetary Penalty should be sustained.

Notice is hereby given that the evidentiary hearing in this proceeding will commence on Tuesday, April 23, 2002, at 9:30 a.m. EDT, at the United States Bankruptcy Court, Courtroom A, Historic U.S. Courthouse, 31 E. 11th St., Chattanooga, Tennessee 37402. The hearing will continue on April 24–26, 2002, beginning at 9 a.m., and, to the extent necessary, on April 30–May 9, 2002, also commencing at 9 a.m., at the same location unless otherwise announced. Members of the public are invited to attend any of these sessions. Hearings will extend until approximately 5 p.m. each day. On Friday, April 26, 2002, however, the hearing will adjourn no later than 12 noon; no hearing is scheduled for Monday, April 29, 2002 and, as the hearing proceeds, the Board may make changes in the foregoing schedule, modifying the times for each day's session or canceling a session, as deemed appropriate to allow for witnesses' availability and other matters arising during the course of the proceeding.

Documents related to this proceeding issued prior to December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the Commission's Public Document Room (PDR), Room 0–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. Documents issued subsequent to November 1, 1999 are available electronically through the Agency wide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <*http://www.nrc.gov/NRC/ADAMS/index.html*>). The PDR and many public libraries have terminals for public access to the Internet.

It is so Ordered.

For the Atomic Safety and Licensing Board.

Dated in Rockville, Maryland, on March 25, 2002.

Charles Bechhoefer,

Administrative Judge.

[FR Doc. 02–7603 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–0299]

UMETCO Minerals Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact. Notice of opportunity for Hearing.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–648 to authorize the licensee, Umetco Minerals Corporation (Umetco) to apply Alternate Concentration Limits (ACL) to licensed constituents of ground water according to the submitted plan. An Environmental Assessment (EA) was performed by the NRC staff in support

of its review of Umetco's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U. S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, D.C. 20555–0001. Telephone 301/415–6606.

SUPPLEMENTARY INFORMATION:

Background

The Umetco former uranium mill site is licensed by the U. S. Nuclear Regulatory Commission (NRC) under Source Materials License SUA–648 to possess byproduct material in the form of uranium waste, such as mill tailings, generated by past uranium processing operations. The Umetco site is located in the East Gas Hills region of western Natrona and eastern Freemont Counties, Wyoming, approximately 80 kilometers (50 miles) southeast of the town of Riverton, Wyoming. The mill operated from 1960 to 1979 and was dismantled in 1992. The Umetco site contains two reclaimed disposal areas; the Above Ground Tailings Impoundment (Impoundment) (including the heap leach area) and the A–9 Repository. The license establishes a separate ground water protection standard for each area. The ground water protection standard is established at two Point of Compliance (POC) wells near each disposal area. These four wells are used to monitor water quality because hazardous constituents have leached from the milling waste into the upper aquifer.

The ACL application requests that site-specific concentration limits for hazardous constituents in ground water be granted for the Umetco site in place of the current concentration values in the license. The concentration limits required to be met under the licensed corrective action program are not attainable due to the high cost and the influence of mining-impacted water. The ground water at the Umetco site and surrounding areas is impacted by open-pit uranium mines with the same constituents resulting from the tailings and this was not considered when the corrective action began in 1991.

Umetco is also proposing that the Point of Exposure (POE) be established for the site at the long-term care boundary. This boundary encompasses all the land that will be transferred to the U.S. Department of Energy (DOE) for perpetual care of the disposal sites. The western side of the boundary would be located about 1.4 km (0.8 miles) west of the Impoundment and the southern side of the boundary would be located about 0.8 km (0.5 miles) south of the A–9 Repository. The POE is the location nearest the site where the public or environment might be exposed to milling impacted ground water, even though such exposure is highly unlikely.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the application of ACL, in accordance with 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. The license amendment would authorize Umetco to apply ACL to the license constituents measured at the POC. The technical aspects of the ACL application are discussed separately in a Technical Evaluation Report (TER) that will accompany the agency's final licensing action.

The results of the staff's appraisal of potential environmental impacts are documented in an EA placed in the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined actual and potential impacts associated with implementation of the proposed ACL, and has determined that the requested amendment of Source Material License SUA–648, authorizing the ACL, will: (1) Be consistent with requirements of 10 CFR Part 40, Appendix A; (2) not be inimical to the public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. An acceptable long-term ground water monitoring program will monitor contaminants to detect if applicable regulatory limits are exceeded. Each of the licensed constituents should remain within the range of background values, for 1000 years at the POE.

2. Present and potential health risks to the public and risks of environmental damage from the proposed application of ACL were assessed. Given the remote location, the expected future land use, the perpetual control by the Federal government of land within the long-term boundary, and the high value of some of the constituents in background due to past surface mining in the area, the staff determined that the risk factors for health and environmental hazards are insignificant.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA–648, to allow application of ACL to licensed constituents in ground water at the Umetco site. The principal alternatives available to the NRC are to:

1. Approve the license amendment request as submitted; or
2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or
3. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of Umetco's plans necessary for license termination (site is in final stages of decommissioning) or the denial of the license amendment. Additionally, in the TER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the ground water criteria specified in 10 CFR 40, Appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed amendment of NRC Source Material License SUA–648. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operators Licensing

Proceedings,'' of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Umetco Minerals Corporation, P.O. Box 1029, Grand Junction, CO 81502;

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(3) By mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

Any hearing that is requested and granted will be held in accordance with the Commission's ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 24th day of March, 2002.

For the Nuclear Regulatory Commission.

Melvyn Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–7605 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company, North Anna Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia. Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Sections 51.21 and 51.32, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would be a full conversion from the current technical specifications (CTS) to a set of improved technical specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. The proposed action is in accordance with the licensee's application dated December 11, 2000, as supplemented by letters dated May 30, June 18, July 16, July 20, August 13, August 27, September 27, October 10, October 17, November 8, November 19, November 29, December 3, December 7, December 12, and December 13, 2001, and January 2, January 25, January 31, February 11, February 18, February 22, February 27, and March 7, 2002.

The Need for the Proposed Action

The Commission's ''Proposed Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (52 FR 3788), dated February 6, 1987, contained an Interim Policy Statement that set forth objective criteria for determining which regulatory requirements and operating restrictions should be included in the TS. When it issued the Interim Policy Statement, the Commission also requested comments on it. Subsequently, to implement the Interim Policy Statement, each reactor vendor owners group and the NRC staff began developing standard TS (STS) for reactors supplied by each vendor. The Commission then published its ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (58 FR 39132), dated July 22, 1993, in which it addressed comments received on the Interim Policy Statement, and incorporated experience in developing the STS. The Final Policy Statement formed the basis for a revision to 10 CFR 50.36 (60 FR 36953), dated July 19, 1995, that codified the criteria for determining the content of TS. The NRC Committee to Review Generic Requirements reviewed the STS, made note of their safety merits, and indicated its support of conversion by operating plants to the STS. For the North Anna Power Station, Units 1 and 2, the STS are NUREG–1431, Revision 1, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. This document formed the basis for the North Anna Power Station, Units 1 and 2, conversion.

The proposed changes to the CTS are based on NUREG–1431 and guidance provided in the Final Policy Statement. The objective of this action is to completely rewrite, reformat, and streamline the CTS (*i.e.,* to convert the CTS to ITS). Emphasis was placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the CTS were also used as the basis for the development of the North Anna Power Station, Units 1 and 2 ITS. Plant-specific issues (i.e., unique design features, requirements, and operating practices) were discussed at length with the licensee.

The proposed changes from the CTS can be grouped into four general categories. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, and less restrictive changes. They are described as follows:

Administrative changes are those that involve restructuring, renumbering, rewording, complex rearranging of requirements, and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1431 and do not involve technical changes to the existing TS. The proposed changes include: (a) Identifying plant-specific wording for system names, etc.; (b)

changing the wording of specification titles in the CTS to conform to the STS; (c) splitting up requirements that are currently grouped, or combining requirements that are currently in separate specifications; (d) deleting specifications whose applicability has expired; and (e) changing to wording that is consistent with the CTS but that more clearly or explicitly states existing requirements. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in the TS. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in 10 CFR 50.36(c)(2)(ii) and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria to North Anna Power Station, Units 1 and 2, is described in the December 11, 2000, application. The affected structures, systems, components, or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the ITS Bases, the Technical Requirements Manual, the Core Operating Limits Report, the Offsite Dose Calculation Manual, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other NRC-approved control mechanisms which provide appropriate procedural means to control changes by the licensee.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the plant. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses.

Less restrictive changes are those where CTS requirements are relaxed, relocated, eliminated, or where new plant operational flexibility has been provided. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the owners groups' comments on the ITS. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they were consistent with current licensing practices and NRC regulations. The licensee's design was reviewed to determine if the specific design basis and licensing basis were consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition, there are 18 changes that are different from the requirements in both the CTS and NUREG–1431 or that are beyond the scope of the changes that are needed to meet the overall purpose of the conversion. These changes are as follows:

1. Change the Allowable Value for engineered safety feature actuation system (ESFAS) interlock P–12 from < 545 degrees F and ≥ 541 degrees F to ≤ 545 degrees F and ≥ 542 degrees F. (ITS 3.3.2)

2. Remove the trip setpoints and change the Allowable Values for the ESFAS Instrumentation. (ITS 3.3.2)

3. Add a note to Action C to indicate that the accumulator isolation is only applicable when accumulator pressure is greater than the power-operated relief valve (PORV) setting, add REQUIRED ACTION C.2 to state ''Remove power from affected accumulator isolation valve operators,'' and add a note in the Limiting Condition for Operation (LCO) section that states ''Accumulator isolation with power removed from the isolation valve operators is only required when accumulator pressure is greater than the PORV lift setting.'' (ITS 3.4.12)

4. Revise required Actions A.2, B.2, C.2, and D.2 to allow verification by administrative controls to ensure the Main Feedwater Isolation Valves, Main Feedwater Regulating Valves, Main Feedwater Pump Discharge Valves, and Main Feedwater Regulating Bypass Valves are closed. (ITS 3.7.3)

5. Remove Component Cooling Water System from ITS LCO 3.7.7. (ITS 3.7.7)

6. Revise the definition of the Ultimate Heat Sink (UHS), which includes the North Anna and Service Water Reservoirs, to only include the Service Water Reservoir. Delete surveillance requirements (SRs) on the North Anna Reservoir. (ITS 3.7.9)

7. Revise the SR frequency from ''18 months'' to ''18 months on a staggered test basis'' for the Main Control Room (MCR)/Emergency Switchgear Room (ESGR) Air Conditioning System. (ITS 3.7.11.1)

8. Add a note to allow the emergency core cooling system (ECCS) pump room boundary openings, which were not open by design, to be opened intermittently under administrative control. (ITS 3.7.12)

9. Add an SR to actuate each ECCS pump room exhaust air cleanup system train by aligning the safeguards area exhaust flow and auxiliary building central exhaust flow through the auxiliary building high-efficiency particulate air filter and charcoal adsorber assembly. Change current SRs to verify each safeguards area exhaust flow is diverted and each auxiliary building filter bank is actuated on an actual or simulated actuation signal. (ITS 3.7.12.2 and 3.7.12.4)

10. Delete testing requirements for the fuel building filtration system. (ITS 3.7.15)

11. Delete the requirements to obtain NRC approval prior to plant operations whenever a steam generator is found to be in Category C–3. (ITS Table 5.5.8–2)

12. Implement plant-specific equations for the overtemperature and overpower delta T equations. (ITS 3.3.1)

13. Change SR 3.3.1.2 and the CTS by only requiring an adjustment of the power range channel if the indicated power of the nuclear instrumentation channel is more than 2% lower than the calculated power of the calorimetric. (ITS 3.3.1)

14. Revise the allowable values of the setpoint for the P–7 low power reactor trips block interlock to a value that differs from the CTS. (ITS 3.3.1, Table 3.3.1–1)

15. Revise the ITS to require entry into ACTION if less than 100% of MCR/ESGR air conditioning system is available. (ITS 3.7.11)

16. Add a function to Table 3.3.2–1 for automatic switchover to containment sump to occur when the refueling water storage tank level is at low—low level. (ITS 3.3.2)

17. Revise the CTS values for reactor trip system instrumentation interlocks by not requiring these specific

interlocks to state the reset values for the allowable values. (ITS 3.3.1)

18. Implement Technical Report EE–0116, Revision 1, ''Allowable Values for Surry and North Anna Improved Technical Specifications (ITS) Tables 3.3.1–1 and 3.3.2–1.''

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. Specifically, the proposed TS changes will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites because no previously undisturbed area will be affected by the proposed TS changes. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the North Anna Power Station, Units 1 and 2, dated April 1973.

Agencies and Persons Consulted

On February 27, 2002, the staff consulted with the Virginia State Official, Mr. Les Foldesi of the Virginia Department of Health, Bureau of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 11, 2000, as supplemented by letters dated May 30, June 18, July 16, July 20, August 13, August 27, September 27, October 10, October 17, November 8, November 19, November 29, December 3, December 7, December 12, and December 13, 2001, and January 2, January 25, January 31, February 11, February 18, February 22, February 27, and March 7, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of March 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–7607 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 11–13, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, April 11, 2002

8:30 A.M.—8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.—10:30 A.M.: Final Review of the Turkey Point License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Florida Power and Light Company regarding the license renewal application for Turkey Point Units 3 and 4, and the associated staff's Safety Evaluation Report (SER).

10:45 A.M.—12:30 P.M.: Advanced Reactor Research Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the Office of Nuclear Regulatory Research (RES) regarding RES'' draft Advanced Reactor Research Plan.

1:30 P.M.—3:30 P.M.: CRDM Penetration Cracking and Reactor Pressure Vessel Head Degradation (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and industry, including Davis-Besse regarding issues related to the investigation of circumferential cracks in PWR control rod drive mechanism (CRDM) penetration nozzles and weldments, and reactor pressure vessel head degradation at the Davis-Besse Nuclear Power Plant.

3:50 P.M.—5:15 P.M.: Westinghouse Owners Group (WOG) and Electric Power Research Institute (EPRI) Initiatives Related to Risk-Informed Inservice Inspection of Piping (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's draft safety evaluation reports on WOG and EPRI addendums to their topical reports (WCAP–14572 and EPRI TR–112657) for risk-informed inservice inspection of piping, including extension of risk-informed methods to the break exclusion region piping.

5:30 P.M.—7 P.M.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. Also, it may discuss a response prepared by the Advisory Committee on Nuclear Waste (ACNW) to the Executive Director for Operation's letter dated

March 6, 2002 to the ACNW report dated January 14, 2002 regarding risk-informing NMSS activities.

Friday, April 12, 2002

8:30 A.M.—8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.—10:30 A.M.: General Electric (GE) Nuclear Energy Topical Report: ''Constant Pressure Power Uprate'' (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and General Electric Nuclear Energy regarding GE Topical Report, ''Constant Pressure Power Uprate,'' and the associated NRC staff's safety evaluation.

Note: A portion of this session may be closed to discuss General Electric proprietary information.

10:50 A.M.—11:45 A.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

11:45—12 Noon.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

1 P.M.—7 P.M.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, April 13, 2002

8:30 A.M.—12:30 P.M.: Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 P.M.—1:00 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Sher Bahadur, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Dr. Sher Bahadur prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Dr. Sher Bahadur if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur (telephone 301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html*.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 25, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–7604 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Yucca Mountain Review Plan, NUREG–1804, Revision 2,; Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of, and requesting comments on, ''Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment.'' The ''Yucca Mountain Review Plan'' provides guidance to the NRC staff for evaluating a potential license application for a geologic repository.

DATES: Comments should be submitted at the public meetings, or in writing by March 29, 2002. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

In addition to providing opportunity for written (and electronic) comments, public meetings on the ''Yucca Mountain Review Plan'' will be held during the public comment period. A notice announcing these meetings will be published in the **Federal Register**.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–0001. Deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

Copies of any comments received and documents related to this action may be examined at the NRC Public Document Room, One White Flint North, Public File Area O1–F21, 11545 Rockville Pike, Rockville, Maryland. Documents are also available electronically at NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/reading-

rm.html. From this site, the public can gain entry into NRC's Agency-wide Documents Access and Management System, which provides text and image files of NRC's public documents. For more information, contact the NRC's Public Document Room Reference staff by telephone at (800) 397–4209, (301) 415–4737, or e-mail: *pdr@nrc.gov*.

The document is also available at NRC's website at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1804/*. You may also send comments electronically from this website by clicking on *comment form*. If a hard copy is preferred, a free single copy of the ''Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment,'' may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Reproduction and Distribution Services Branch, Washington, DC 20555–0001; sending an e-mail to *Distribution@nrc.gov*; or by sending a fax to (301) 415–2289. A copy of the ''Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment,'' is also available for inspection, and copying for a fee, in the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION, CONTACT: Jeffrey A. Ciocco, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–7F3, Washington, DC 20555–0001, telephone (301) 415–6391, e-mail: *jac3@nrc.gov*.

SUPPLEMENTARY INFORMATION: The licensing criteria are contained in the Commission's regulations (part 63), ''Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, NV'' (November 2, 2001; 66 FR 55732). The Secretary of Energy has recommended to President Bush the Yucca Mountain site for the development of a nuclear waste repository. President Bush has notified Congress that Yucca Mountain is qualified for a construction permit application. The law now gives Nevada the opportunity to disapprove the President's recommendation, and, if they do, then Congress will have an opportunity to act. The Department of Energy (DOE) would submit any license application to the NRC. NRC then must review and either approve or disapprove the license application.

The principal purpose of the ''Yucca Mountain Review Plan'' is to ensure the quality and uniformity of NRC staff review of a potential license application. The ''Yucca Mountain Review Plan'' has separate sections for reviews of repository safety before permanent closure, repository safety after permanent closure, the research and development program to resolve safety questions, the performance confirmation program, and administrative and programmatic requirements. Each of these sections would support NRC's review of DOE's compliance determination with specific regulatory requirements from part 63. The regulations and the Yucca Mountain Review Plan'' are risk-informed and performance-based to the extent practical.

Dated at Rockville, Maryland, this 22nd day of March 2002.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–7606 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings; Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 1, 2002: closed meetings will be held on Tuesday, April 2, 2002 and Wednesday, April 3, 2002 at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, April 2, 2002, will be: opinions; formal order of private investigation; regulatory matter regarding financial institutions; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Wednesday, April 3, 2002, will be: formal orders of private investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: March 26, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7777 Filed 3–27–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45639; File No. SR–Amex–2002–18]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Oil and Natural Gas Notes

March 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b-4 thereunder, [2] notice is hereby given that on March 8, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II 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 and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade notes, the return on which is based upon the Oil and Natural Gas Index. The Oil and Natural Gas Index is based upon the blended performance of the Amex Oil Index (the ''Oil Index'') and the Amex Natural Gas Index (the ''Natural Gas Index'') (each, an ''Underlying Index'' and together, the ''Underlying Indices''), discussed more fully below. Initially, the Underlying Indices will each have a weighting of 50% of the Oil and Natural Gas Index,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

and the Oil and Natural Gas Index will be rebalanced annually to reset the weighting of the Underlying Indices to approximately 50% each.

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 Amex 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 III below. The Amex 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

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants. [3] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Oil and Natural Gas Index (the ''Notes''). The Oil and Natural Gas Index will be determined, calculated, and maintained solely by the Amex. [4]

The Notes will conform to the initial listing guidelines under Section 107 [5] and continued listing guidelines under Sections 1001–1003 [6] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. (''Merrill Lynch'') that provide for single payment at maturity. The Notes will have a term of not less than one nor more than ten years and will entitle the owner at maturity to receive an amount based upon the percentage change between the ''Starting Index Value'' and the ''Ending Index Value'' (the ''Redemption Amount''). The ''Starting Index Value'' is the value of the Oil and Natural Gas Index on the date on which the issuer prices the Notes issued for the initial offering of sale to the public. The ''Ending Index Value'' is the value of the Oil and Natural Gas Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During a two-week period in the designated month each year, the investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Oil and Natural Gas Index at such repurchase date. The Notes are not callable by the issuer.

The Notes are cash-settled in U.S. dollars. The holder of a Note does not have any right to receive any of the securities comprising the Underlying Indices or any other ownership right or interest in the Underlying Securities. The Notes are designed for investors who want to participate or gain exposure to the U.S. oil and natural gas industries and who are willing to forgo market interest payments on the Notes during such term. [7]

The Oil and Natural Gas Index is based upon the combined performance of the Oil Index and the Natural Gas Index. The Oil Index is an index comprised of fourteen (14) stocks of large, widely-held oil companies. The Oil Index is a price-weighted index that measures the performance of the oil industry through changes in the sum of the prices of its component stocks. The Index was developed with a benchmark level of 125.00 on August 27, 1984. The current component securities in the Oil Index are listed on the New York Stock Exchange Inc. (the ''NYSE''). As of March 1, 2002, the market capitalization of the securities included in the Oil Index ranged from a high of $291.2 billion to a low of $3.1 billion. The average daily trading volume for these index securities over the last six (6) months ended March 1, 2002, ranged from a high of 10.01 million shares to a low of .41 million shares. The Commission has previously approved the listing and trading of options on the Oil and Gas Index, which was later modified and re-named the Oil Index. [8]

The Natural Gas Index is an index comprised of fifteen (15) securities of highly-capitalized companies in the natural gas industry. The Natural Gas Index is calculated using an equal dollar-weighting methodology designed to ensure that each of the component securities are represented in equal dollar amounts in the Index. A benchmark level of 300.00 for the Index was initially established at the close of trading on October 15, 1993. The index portfolio consists of fifteen (15) natural gas industry stocks or American Depositary Receipts (''ADRs'') which are listed on the Amex, the NYSE or traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation System (''NASDAQ'') and reported National Market System securities. As of March 1, 2002, the market capitalization of the securities included in the Natural Gas Index ranged from a high of $21.2 billion to a low of $1.5 billion. The average daily trading volume for these index securities over the last six (6) months ended March 1, 2002 ranged from a high of 5.85 million shares to a low of .151 million shares. The Exchange has previously listed options on the Natural Gas Index. [9]

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[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89–29).

[4] Subject to the criteria described in the prospectus supplement regarding the construction of the Oil and Natural Gas Index, the Exchange has sole discretion regarding changes to the Oil and Natural Gas Index.

[5] The initial listing standards for will require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[6] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[7] Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Steven G. Johnston, Attorney, Division of Market Regulation, Commission, on March 3, 2002. (''March 3, 2002 Telephone Conversation'').

[8] *See* Securities Exchange Act Release No. 20075 (August 12, 1983), 48 FR 37556 (August 18, 1983) (approving the listing and trading of options on the Oil and Gas Index)(''Oil and Gas Index Approval Order''); Securities Exchange Act Release No. 21409 (October 19, 1984), 49 FR 43011 (October 25, 1984) (approving change of index from market-weighted to price-weighted index; reduction in number of component stocks by eliminating companies engaged in substantial gas exploration, drilling, and production activities; and changing name to the Oil Index).

[9] *See* Securities Exchange Act Release No. 33720 (March 7, 1994), 59 FR 11630 (March 11, 1994) (approving listing and trading of options based on the Natural Gas Index)(''Natural Gas Index Approval Order'').

At the outset, the Underlying Indices will each represent 50% of the Starting Index Value. Specifically, both the Oil Index and Natural Gas Index will be assigned a multiplier on the date of issuance so that each Underlying Index represents an equal percentage of the value of the Oil and Natural Gas Index on the date the Notes are priced for initial sale to the public. The multiplier indicates the percentage of the Underlying Index, given its current value, to be included in the calculation of the Oil and Natural Gas Index. The Oil and Natural Gas Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day the Notes are priced for initial sale to the public.

The value of the Oil and Natural Gas Index at any time will equal: (1) the sum of the values of each Underlying Index multiplied by their respective multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.[10] Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by an issuer represented in the Underlying Indices, multiplied by the number of shares of stock in the respective Underlying Index on the ex-dividend date, divided by the index divisor applicable to such Underlying Index, multiplied by the multiplier applicable to such Underlying Index on the ex-dividend date.[11]

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each respective Underlying Index in the Oil and Natural Gas Index. Thus, the value of the dividends is allocated to each respective Underlying Index. The share multiplier of each Underlying Index will be adjusted to reflect a reinvestment of such current quarter dividends into each Underlying Index based on the closing market price of the Underlying Index on the last day in the immediate preceding calendar quarter.[12]

As of the close of business each anniversary date (anniversary of the day the Index was initially calculated and set to 100), the Index will be rebalanced by the Amex so that each Underlying Index will represent approximately 50% of the value of the Index. To effectuate this result, the multiplier for each Underlying Index will be determined by the Amex and will indicate the percentage allocated to each Underlying Index, given their respective closing values on the anniversary date, so that each Underlying Index represents an equal percentage of the Oil and Natural Gas Index value at the close of business on an anniversary date. For example, if the Oil and Natural Gas Index value at the close of business on an anniversary date was 200, then each of the Underlying Indices would be allocated a portion of the value of the Oil and Natural Gas Index equal to 100, and if the closing market price of one Underlying Index on the anniversary date was 160, the applicable share multiplier would be reset to 0.625. Conversely, if the Oil and Natural Gas Index value was 80, then each of the Underlying Indices would be allocated the value of the Index equal to 40 and if the closing market price of one Underlying Index on the anniversary date was 20, the applicable share multiplier would be reset to 2.

The Exchange will calculate the Oil and Natural Gas Index and, similar to other stock index values published by the Exchange, the value of the Oil and Natural Gas Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to a portfolio of equity indices, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[13] Second, the Notes will be subject to the equity margin rules of the Exchange.[14] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) to determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. Furthermore, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.[15]

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[16] in general and furthers the objectives of Section 6(b)(5)[17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[10] March 3, 2002 Telephone Conversation. At the end of each day, the Oil and Natural Gas Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (*i.e.*, 1.5% / 365 days = 0.0041% daily). This reduction to the value of the Oil and Natural Gas Index will reduce the total return to investors upon the exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

[11] March 3, 2002 Telephone Conversation.

[12] March 3, 2002 Telephone Conversation.

[13] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[14] *See* Amex Rule 462 and Section 107B of the Company Guide.

[15] March 3, 2002 Telephone Conversation.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

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 Exchange. All submissions should refer to File No. SR–Amex–2002–18 and should be submitted by April 19, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[18] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[19] Accordingly, the Commission finds that the listing and trading of the Notes based on the Oil and Natural Gas Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[20]

As described more fully above, at maturity, or upon exchange, the holder of a Note will receive an amount based upon the percentage change in the value of the Oil and Natural Gas Index, less the index adjustment factor. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate in the U.S. oil and natural gas industries. As described by the Amex, the value of the dividends is allocated to each respective Underlying Index.

The Notes are not-leveraged, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Oil and Natural Gas Index. The Notes do not have a minimum principal amount that will be repaid at maturity and the payments on the Notes prior to or at maturity may be less than the original issue price of the Notes.[21] Thus, if the Oil and Natural Gas Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced, based on the performance of the Underlying Indices, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Commission notes that the Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have at least $4 million in market value.[22] In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Indices comprising the Oil and Natural Gas Index, will be publicly available.[23]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[24] the Commission believes that

[18] *Id.*

[19] *See* Securities Exchange Act Release Nos. 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected notes linked to the Bio-Tech Pharmaceutical Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non–principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities (''MITTS'')) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[20] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] The Commission recognizes that during a two-week period in the designated month investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Oil and Natural Gas Index at such repurchase date.

[22] *See* Company Guide Section 107A.

[23] The companies that comprise the Oil and Natural Gas Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[24] *See, e.g.,* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7,

Continued

this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Indices of the Oil and Natural Gas Index or raise manipulative concerns. As discussed more fully above, the Oil and Natural Gas Index is based upon the return of the Underlying Indices. Each of the Underlying Indices will have a weighting of 50% of the weight of the Oil and Natural Gas Index, initially, and immediately following each annual rebalancing of the Oil and Natural Gas Index. In addition, the Oil Index's price-weighting and the Natural Gas Index's equal dollar-weighting methodologies are commonly applied index calculation methods. Moreover, Amex's listing and trading of other products on both of the Underlying Indices have been previously approved by the Commission.[25] In approving the listing and trading of these other products on the Underlying Indices, the Commission noted in its approval orders that the Amex has developed several composition and maintenance criteria for the Underlying Indices that the Commission believes will minimize the potential for manipulation of the Underlying Indices.[26] In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Oil and Natural Gas Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Oil and Natural Gas Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[27] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[28] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Amex–2002–18), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

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1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[25] *See* Oil and Gas Index Approval Order, *supra* note 9; and Natural Gas Approval Order, *supra* note 10.

[26] Among other things, the Amex would be required to submit a rule filing with the Commission pursuant to Section 19(b) of the Act prior to expanding either of the Underlying Indices to greater than twenty stocks or reducing either of the Underlying Indices to less than ten stock. The Commission finds that this requirement will protect against the design of the Underlying Indices from being materially changed without Commission review and approval, and that it is unlikely that attempted manipulations of prices of the issues in the Underlying Indices would affect significantly the Underlying Indices' value. *See* Securities Exchange Act Release No. 31245 (September 28, 1992, 57 FR 45844 (October 5, 1992) (approving the listing and trading of long-term options (''LEAPS'') based on the Biotech Index and a reduced value Biotech Index).

[27] *See supra* note 20.

[28] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45628; File No. SR–Amex–2001–94]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the American Stock Exchange LLC To Increase to Two Hundred and Fifty the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO–EX

March 22, 2002.

I. Introduction

On October 29, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO–EX. On November 15, 2001, the proposed rule change was published for public comment in the **Federal Register**.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

In 1985, the Exchange implemented its AUTO–EX system for options, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File (''AOF''). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO–EX, was recently increased to allow for the entry of orders of up to 2,500 option contracts.[4] AUTO–EX, however, is only permitted to execute equity option orders and index option orders of up to 100 contracts.[5] Thus, market and marketable limit orders of more than 100 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through the AUTO–EX system. It is proposed that this increase to 250 contracts as the permissible order size for AUTO–EX be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size and AUTO–EX parameters on its web page. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

The Exchange represents that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45045 (November 7, 2001), 66 FR 57495.

[4] *See* Securities Exchange Act Release No. 44065 (March 12, 2001), 66 FR 15513 (March 19, 2001).

[5] *See* Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001) (approving amendment to Amex Rule 933).

and during other, non-emergency situations for certain option classes. The Exchange believes that automatic executions of orders for up to 250 contracts will allow for the quick, efficient execution of public customer orders.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[6] Among other provisions, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.[7]

While increasing the maximum order size limit from 100 contracts to 250 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for AUTO–EX. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to the Amex's AUTO–EX system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO–EX, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex floor governors or senior floor officials determine to approve orders as large as 250 contracts as eligible for AUTO–EX, Amex floor governors or senior floor officials or Amex staff should disengage AUTO–EX more frequently by, for example, declaring an ''unusual market condition.''[8] Disengaging AUTO–EX can negatively affect investors by making it slower and less efficient to execute their orders. It is the Commission's view that the Amex, when increasing the maximum size of orders that can be sent through AUTO–EX, should not disadvantage all customers—the vast majority of whom enter orders for less than 250 contracts—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2001–94) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[6] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] The Amex has filed a proposed rule change (File No. SR–Amex–2001–74) with the Commission that would codify the Exchange's current practices and policies by specifying (i) the circumstances under which AUTO–EX can be disengaged or operated in a manner other than the normal manner set forth in Exchange rules and policies and (ii) the required documentation of the reasons for any action to disengage AUTO–EX to operate in a manner other than normal. The proposed rule change was filed pursuant to the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282) and is pending with the Commission.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45630; File No. SR–CBOE–2002–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Customer Portfolio and Cross-Margining Requirements

March 22, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules, for certain customer accounts, to allow member organizations to margin listed, broad-based, market index options, index warrants and related exchange-traded funds according to a portfolio margin methodology as an alternative to the current strategy-based margin methodology. The proposed rule change will also provide for cross-margining by allowing broad-based index futures and options on such futures to be included with listed, broad-based index options, index warrants and related exchange-traded funds for portfolio margin treatment.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, at the Commission, and on the Commission's website.

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 CBOE proposes to expand its margin rules by providing a portfolio margin methodology for listed, broad-based market index options, index warrants and related exchange-traded funds that clearing member organizations may extend to eligible customers as an alternative to the current strategy-based option margin requirements. The proposed rule change would also allow broad-based index futures and options on such futures to be included in a portfolio margin account, thus providing a cross-margin capability. The CBOE seeks to introduce the proposed new rule as a two-year pilot program that would be made available to member organizations on a voluntary basis.

The proposed rule change would permit self-clearing member organizations to apply a prescribed portfolio margin methodology to an account[3] of an affiliate, another broker-dealer, and an account of a member of a national futures exchange who is a futures floor trader. Any other customers of the clearing member would be required to have account equity of at least $5 million to be eligible for portfolio margin treatment. This circumscribes the number of accounts able to participate and adds safety in that such accounts are more likely to be of significant financial means and investment sophistication. Further, portfolio margining is most effective when applied to larger accounts with diverse option positions and related securities, and any related futures contracts. It is expected that institutional customers will be the primary participants. Whether the account equity requirement should be lowered to allow participation of more customers will be assessed at the end of the pilot program period. Application of portfolio margin, including cross-margin, to an IRA account would be prohibited under the proposed rule change.

The proposed portfolio margin and cross-margin rules have been developed by the CBOE in cooperation with The Options Clearing Corporation (''The OCC''), the New York Stock Exchange, Inc. (''NYSE''), the American Stock Exchange, LLC (''AMEX''), the Board of Trade of the City of Chicago, Inc. (''CBOT''), and the Chicago Mercantile Exchange, Inc. (''CME''). The CBOE intends to provide a written overview describing the operational details of the portfolio margin and cross-margin pilot program to potential member organization participants to introduce and explain the pilot program.

A committee of representatives from the member organizations identified as potential participants, and staff of the sponsoring exchanges and The OCC (the ''Portfolio Margin Committee'') was formed and met several times in 1999 and 2000 to refine the portfolio margin and cross-margin pilot program. This group has recommended adoption of the portfolio margin and cross-margin pilot program, as finalized by the group, and the related rule proposals. In addition, the portfolio margin and cross-margin pilot program has been presented to the NYSE's Rule 431 Committee[4] on two occasions, with draft rules included on the second occasion, and has received the NYSE's Rule 431 Committee's support.

b. Overview—Portfolio Margin Computation

(1) Portfolio Margin

Under a portfolio margin system, margin is required based on the greatest loss that would be incurred in a portfolio if the value of components (underlying instruments in the case of options) move up or down by a predetermined amount (*e.g.,* +/−5%). Under the Exchange's proposed portfolio margin rule, listed index options and underlying instruments (also related instruments[5] in the case of a cross-margin account) would be grouped by class[6] (*e.g.,* S&P 500, S&P 100, etc), each class group being a portfolio.[7] The gain or loss on each position in a portfolio would be calculated at each of 10 equidistant points (''valuation points'') set at and between the upper and lower market range points. A theoretical options pricing model would be used to derive position values[8] at each valuation point for the purpose of determining the gain or loss. Gains and losses would then be netted for positions within the class or portfolio at each valuation point. The greatest net loss among the 10 valuation points would be the margin required on the portfolio or class. The margin for all other portfolios within an account would be calculated in a similar manner. Broad-based index classes (portfolios) that are highly correlated would be allowed offsets such that, at the same valuation point, for example, 90% of a gain in one class may reduce or offset a loss in another class. The amount of offset allowed between portfolios would be the same amount that is permitted under the risk-based haircut methodology set forth in Appendix A of the Commission's net capital rule.[9] A per contract minimum would be established and would override if a lesser requirement is rendered by the portfolio margin computation.[10]

Member organizations would not be permitted to use any theoretical pricing model to generate the prices used to calculate theoretical profits and losses. Under the proposed rule change, the theoretical prices used for computing profits and losses must come from a theoretical pricing model that, pursuant to the Commission's net capital rule,[11] qualifies for purposes of determining the amount to be deducted in computing net capital under a portfolio-based methodology. CBOE believes that delineating acceptable theoretical pricing models is best achieved by applying the Commission's net capital rule by reference. In this way, consistency with the Commission's net capital rule is maintained. In addition, since theoretical pricing models must be approved by a Designated Examining Authority (''DEA'') and reviewed by the Commission to qualify, uniformity across models can be assured. As a result, portfolio margin and cross-margin requirements will not vary materially from firm to firm. Currently, the theoretical model used by The OCC is the only model qualified pursuant to the Commission's net capital rule.

[3] An account dedicated to portfolio margining.

[4] The NYSE Rule 431 Committee is comprised of securities industry representatives, primarily representatives of NYSE member organizations. NYSE Rule 431 contains the NYSE's margin rules. The function of the NYSE Rule 431 Committee is to assess the adequacy of NYSE Rule 431 on an ongoing basis, review proposals for changes to NYSE Rule 431, and recommend changes that are deemed appropriate.

[5] Under the proposed rule change, the term ''related instrument'' would mean, with respect to an options class or product group, futures contracts and options on futures contracts covering the same underlying instrument.

[6] Under the proposed rule change, the term ''options class'' would refer to all options contracts covering the same underlying instrument.

[7] CBOE's pilot program would permit an exchange-traded fund structured to replicate the composition of the index to be included; however, stock baskets would not be permitted at this time.

[8] Position values would represent the difference between the position closing price and the theoretical value at each valuation point.

[9] Rule 15c3–1a under the Act, 17 CFR 240.15c3–1a.

[10] The proposed rules set a per contract minimum of $37.50.

[11] *See* Rule 15c3–1a(b)(1)(i)(B) under the Act, 17 CFR 240.15c3–1a(b)(1)(i)(B).

Consequently, all member organizations participating in the pilot program would, at least for the foreseeable future, obtain their theoretical values from The OCC.

The Exchange's proposed rule would propose a market range of +/−10% for computing theoretical gains and losses in broad-based, non-high capitalization index portfolios. A market range of +6%/−8% is proposed for broad-based, high capitalization index portfolios.[12] These are the same ranges currently applied to options market makers for the purpose of computing portfolio or risk-based haircuts. On a historical basis, these ranges cover one day moves at a very high level of confidence, and would be competitive with the market range coverage applied for performance bond (margin) purposes in the futures industry on comparable index futures. The proposed rule change requires that a separate securities margin account (or subaccount of a securities margin account) be used for portfolio margining.

(2) Cross-Margining

Related index futures and options on such futures would be allowed to be carried in the portfolio margin account, thus affording a cross-margin capability. Alternatively, the proposed rule change permits a clearing member to establish a separate portfolio margin account (securities margin account) exclusively for cross-margining. In a portfolio margin account, including one that is used exclusively for cross-margining, constituent portfolios may be formed containing index options, index warrants and exchange-traded funds structured to replicate the composition of the index underlying a particular portfolio, as well as related index futures and options on such futures. Cross-margining would operate similar to the cross-margin program that was approved by the Commission and the Commodity Futures Trading Commission (''CFTC'') for listed options market-makers and proprietary accounts of clearing member organizations. There is one major difference in that a securities account would be used instead of a futures account and, therefore, SEC customer protection rules and insurance coverage by the Securities Investor Protection Corporation (''SIPC'') would apply instead of CFTC rules concerning customer protection and liquidation proceedings. For determining theoretical gains and losses, and resultant margin requirements, the same portfolio margin computation program will be applied to portfolio margin accounts that contain a cross-margin element, to portfolio margin accounts that do not contain a cross-margin element, and to portfolio margin accounts used exclusively for cross-margining.

c. Margin or Minimum Equity Deficiency

Under proposed CBOE Rule 12.4(h), positions in a portfolio margin account would be valued at current market prices, as currently defined in the Exchange's margin rules. Under the proposed rule change, account equity would be calculated and maintained separately for each portfolio margin account. For purposes of the $5 million minimum account equity requirement, all accounts owned by an individual or entity may be combined. Proposed CBOE Rule 12.4(i) requires that additional margin must be obtained with one business day (T+1) whenever equity is below the margin required, regardless of whether the deficiency is caused by the addition of new positions, the effect of unfavorable market movement on existing positions, or a combination of both. The portfolio margin requirement, therefore, would be both the initial and maintenance margin requirement, and no differentiation would be necessary. In addition, proposed CBOE Rule 12.4(g) would require that, in the event account equity falls below the $5 million minimum, additional equity must be deposited within 3 business days (T+3). If the deficiency were not resolved within 3 business days, the carrying member organization would be prohibited under the proposed rule change from accepting any new opening orders beginning on T+4, with the exception of opening orders that hedge existing positions. This prohibition would remain in effect until a $5 million equity was established.

d. Risk Disclosure Statement and Acknowledgement

In addition, the Exchange proposes that member organizations provide every portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account.[13] This disclosure statement highlights the risks and operation of portfolio margin accounts, including cross-margining, and the differences between portfolio margin and strategy-based margin requirements. The disclosure statement is divided into two sections, one dealing with portfolio margining and the other with cross-margining. The disclosure statement clearly notes that additional leverage is possible in an account margined on a portfolio basis in relation to strategy-based margin. Among other things, the disclosure statement covers who is eligible to open a portfolio margin account, the instruments that are allowed, and when deposits to meet margin and minimum equity are due. The fact that long option positions held in a portfolio margin account are not segregated, as they generally would be in the case of a regular margin account under the Commission's customer protection rules, is explained. Also included within the portfolio margin section is a summary list of the special risks of portfolio margin accounts, such as: increased leverage; shorter time for meeting margin; involuntary liquidation if margin not received; inability to calculate future margin requirements because of the data and calculations required; and that long positions are subject to a lien. The risks and operation of a cross-margin feature are outlined in the cross-margin section of the disclosure statement, and a summary list of the special risks associated with cross-margining is included.

Further, at or prior to the time a portfolio margin account is initially opened, member organizations would be required to obtain a signed acknowledgement concerning portfolio margining in general from the customer. In addition, prior to accommodating cross-margining, member organizations would be required to obtain a second signed acknowledgement within the same time frame that pertains to cross-margin.

By signing the general acknowledgement required of all customers, the customer would attest to having read the disclosure statement and being aware of the fact that long option positions in a portfolio margin account (which includes cross-margin accounts) are not subject to the segregation requirements under the customer protection rules of the Commission, and would be subject to a lien by The OCC. In signing the

[12] CBOE believes that it is imperative that these market move ranges be competitive with the range used in the futures industry for computing margin (performance bond) on broad-based index futures. The proposed ranges accomplish this goal. Customer performance bond in the futures industry is computed using a portfolio margining system known as the Standard Portfolio Analysis of Risk (''SPAN''). The terms ''high capitalization'' and ''non-high capitalization'' have the same meaning as they do for the purposes of risk-based haircuts (Rule 15c3–1 under the Act, 17 CFR 240.15c3–1).

[13] Even a customer that engages exclusively in cross-margining is a portfolio margin customer, as the proposed rule change permits cross-margining to be conducted only by applying the portfolio margin methodology.

additional acknowledgement applicable to cross-margining, the customer would attest to having read the disclosure statement and being aware of the fact that futures positions are being carried in a securities account, are subject to the Commission's customer protection rules,[14] and fall under the authority of the SIPC in the event the carrying broker-dealer becomes financially insolvent. Within Chapter 9 of the Exchange's rules (''Doing Business with the Public''), the Exchange would prescribe the format of the written disclosure statement and acknowledgements in proposed Exchange Rule 9.15(d)—Delivery of Current Options Disclosure Documents and Prospectus. Like a current Exchange rule that prescribes the format for a Special Statement for Uncovered Options Writers (CBOE Rule 9.15(c)), proposed Exchange Rule 9.15(d) would allow member organizations to develop their own format, provided it contains substantially similar information and it is approved in advance by the Exchange.

e. Net Capital

The Exchange also proposes to add a new requirement in CBOE Rule 13.5 to mandate that the gross customer portfolio margin requirements of a broker-dealer may at no time exceed 1,000 percent of a carrying broker-dealer's net capital (a 10:1 ratio). This requirement is intended to place a ceiling on the amount of margin a broker-dealer can extend to its customers in relation to its net capital.

f. Internal Risk Monitoring Procedures

The Exchange further proposes a separate, related rule that would require member organizations that carry portfolio margin or cross-margin accounts to establish and maintain written procedures for assessing and monitoring the potential risks to their capital. Specifically, proposed CBOE Rule 15.8A (Risk Analysis of Portfolio Margin and Cross-Margin Accounts) would require that the member organization file and maintain its current procedures with its DEA, and provide the DEA with such information as the DEA may reasonably require regarding the member organization's risk analysis of any and all portfolio margin and cross-margin accounts carried for customers. Proposed CBOE Rule 15.8A would incorporate current Exchange Rule 15.8—Risk Analysis of Market-Maker Accounts—by reference to require that the risk analysis be conducted in the same manner as prescribed in Exchange Rule 15.8. Additionally, proposed CBOE Rule 15.8A would set forth certain undertakings that must be included in the written procedures (*e.g.*, review and approval of credit limits for each customer and across all accounts).

Because member organizations would be required under the proposed rule change to have risk monitoring procedures, proposed CBOE Rule 12.4(i) states that the current CBOE Rule 12.9—Meeting Margin Calls by Liquidation Prohibited—prohibiting excessive liquidations to meet margin requirements will not apply to portfolio margin and cross-margin accounts. Furthermore, given the proposed risk monitoring procedures, CBOE proposes that day trading margin requirements would not apply to portfolio margin and cross-margin accounts.[15] Through these risk-monitoring procedures, member organizations will be expected to oversee portfolio margin and cross-margin accounts for excessive liquidations and day trading and take appropriate action according to their procedures.

It should be noted that the disclosure statement delivery requirement, the $5 million minimum equity requirement, and the next day deposit condition for additionally required margin were all added by the Portfolio Margin Committee. The Portfolio Margin Committee deemed these requirements prudent given that less margin is generally required under a portfolio margining approach than under the current strategy-based methodology, and these measures made the plan entirely acceptable to the member firm representatives.

g. Margin at the Clearing House Level[16]

The Exchange proposes that all customer portfolio margin account transactions not involving a futures transaction (*e.g.,* cross-margin) be cleared in one special omnibus account for the clearing firm at The OCC. In addition, the Exchange proposes that all transactions involving cross-margining, both the security and futures product, be cleared in one of two additional special omnibus accounts for cross-margining, depending on the entity that clears the futures product being cross-margined. One cross-margin omnibus account corresponds to a cross-margining agreement between The OCC, the CME and the New York Clearing Corporation. The other omnibus account corresponds to a cross-margining agreement between The OCC and the Board of Trade Clearing Corporation. The OCC will compute margin for the special omnibus accounts using the same portfolio margin methodology applied at the customer level. The OCC will continue to require full payment from the clearing firm for all long option positions. However, as previously noted, long positions will not be segregated like they are in the firm's regular customer range account at The OCC. This is necessary and preferred with a portfolio margining methodology because all long positions must be available for margin offset. Margin relief is based on a dollar offset basis as opposed to identifying specific contract to contract offsets under a strategy-based methodology. This may result in situations where the long positions of a given customer could serve to offset the risk in another customer's short position. Long positions would, therefore, be subject to The OCC lien. An OCC clearing member currently has the ability to unsegregate a long position in order to pair it with a short position (contract to contract basis) and form a qualified spread. Under the proposed treatment of long positions in a portfolio margin omnibus account at The OCC, all long positions would be unsegregated, freeing The OCC clearing member from the task of determining which long positions offset risk and from specifying each position to be unsegregated.

h. Rationale for Portfolio Margin

Portfolio margining brings a modern approach to quantifying risk and offers a number of efficiencies. It eliminates the task of analyzing the portfolio and sorting it according to currently recognized strategies (*e.g.,* spreads), and computing a margin requirement for each individual position or strategy. This process becomes quite cumbersome in an account with

[14] As disclosed in the general acknowledgement form (required of any portfolio or cross-margin customer), portfolio margin and cross-margin accounts operate pursuant to an exception to the customer protection rules in that fully paid long positions will not be segregated.

[15] The CBOE currently does not have a day-trading margin rule. Accordingly, the proposal to make day trading margin requirements inapplicable to portfolio margin and cross-margin accounts would not apply until CBOE has filed, and the Commission has approved, a proposed rule change relating to day trading margin. Telephone conversation between Richard Lewandowski, Vice President, Division of Regulatory Services, CBOE, and Hong-Anh Tran, Special Counsel, Division of Market Regulation (''Division''), Commission, on February 12, 2002. The NYSE and the National Association of Securities Dealers, Inc. (''NASD'') have day trading margin rules and the CBOE does review its member organizations as necessary for compliance with day trading rules when the member is also a NYSE member or a NASD member.

[16] The Commission anticipates that the clearing arrangements described in this section will be the subject of a separate proposed rule change filed by The OCC.

multiple positions and complex strategies. More importantly, for a given market move, up or down, in a diverse portfolio there will be listed option positions that appreciate and other option positions that will depreciate. Under a portfolio margin system, offsets are fully realized, whereas, under the current strategy-based system, positions and/or a group of positions comprising a single strategy are margined independent of each other and offsets between them do not figure into the total margin requirement as efficiently. In addition, under a portfolio margin system, the volatility of an individual listed option series is used in the theoretical pricing model that renders the price used to compute a gain/loss on that option position at each valuation point. This links the margin required to the risk in each particular position in contrast to the strategy-based margin. Strategy-based margin applies a universal percentage requirement (of the underlying index value) to all short option positions in the same category (*e.g.,* broad-based), irrespective of the fact that all options prices do not change equally (in percentage terms) with a change in the price or level of the underlying instrument.

Theoretical options pricing models have become widely accepted and utilized since Fischer Black and Myron Scholes first introduced a formula for calculating the value of a European style option in 1973.[17] Other formulas, such as the Cox-Ross-Rubinstein model have since been developed. Option pricing formulas are now used routinely by option market participants to analyze and manage risk and have proven to be highly effective and preferred. In addition, essentially the same portfolio methodology described above has been used successfully by broker-dealers since 1994 to calculate haircuts on option positions for net capital purposes.[18]

The Board of Governors of the Federal Reserve System (the ''Federal Reserve Board'' or ''FRB'') in its amendments to Regulation T in 1998 permitted SROs to implement portfolio margin rules, provided they are approved by the Commission.[19] A portfolio margin system recognizes the offsetting gains from positions that react favorably in market declines, while market rises are tempered by offsetting losses from positions that react negatively. A portfolio margin approach can thus have a neutralizing effect on option portfolio volatility. In times of market stress, the current strategy-based margin can result in margin calls and forced liquidations, thus contributing to the selling pressure in the market. The offset ability of portfolio margining can alleviate the need for liquidations, slowing acceleration of volatility in a crisis.

More recently, the FRB encouraged the development of a portfolio margin approach in a letter to the Commission and the CFTC delegating authority to the agencies to jointly prescribe margin regulations for security futures products.[20] In that letter, the FRB wrote that it ''has encouraged the development of [portfolio margin approaches] by, for example, amending its Regulation T so that portfolio margining systems approved by the Commission can be used in lieu of the strategy-based system embodied in the Board's regulation.'' The FRB concluded that letter by writing ''The Board anticipates that the creation of security future products will provide another opportunity to develop more risk sensitive, portfolio-based approaches for all securities, including security options and security futures products.''

An ability to cross-margin listed index options with index futures, and options on such futures, is critical because many professional investors hedge their listed index options with futures. Although haircuts assessed on broker-dealers with respect to computing their net capital requirement recognize offsets between securities index options and index futures, current margin practice does not allow these offsets. Cross-margin benefits the financial markets and clearing system in general, not just individual investors. Cross-margin would reduce the number of forced liquidations. Currently, an option (securities) account and futures account of the same customer are viewed as separate and unrelated. In addition, currently an option account must be liquidated if the risk in the positions has increased dramatically or margin calls cannot be met, even if gains in the customer's futures account offset the losses in the options account. If the accounts can be combined (*i.e.*, cross-margin), there is little or no net change in risk and unnecessary liquidation can be avoided. The severity of a period of high volatility in the market is lessened if the number of liquidations is reduced because, for example, liquidating into a declining market exacerbates the decline. A capability to cross-margin listed index options and index futures would further alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility, particularly in times of market downturns. Various government agencies and task groups have previously advocated implementation of a cross-margin system. Those groups include the Presidential Task Force on Market Mechanics (also known as the Brady Commission)[21] and the Commission.[22]

Listed index options are now at a disadvantage to economically equivalent derivative products traded on futures exchanges in terms of margin requirements. Since 1988, index futures and options have been margined under a portfolio margin system known as SPAN. While the risks of listed index options are no greater than an equivalent position in an index future or option on the future, margin required on listed securities index options is significantly higher in many cases. Currently, listed index options margin (excluding the option premium) for a short at-the-money contract approximates 15% of the underlying index value while SPAN margin on a comparable futures index option contract is approximately 6% of the index value. When faced with such a disparity, investment managers discerningly choose futures products over listed index options for their hedging to reduce their costs. A portfolio style margin application for listed index options will reduce disparities between securities index options and futures products, thus making listed index products more competitive and more effective tools for investors.

Relief provided by a portfolio margin system is also needed so that listed index options can compete with over-the-counter derivatives, which can be

[17] In 1997, Fischer Black and Myron Scholes were awarded a Nobel Prize for the development of an options pricing formula.

[18] On March 15, 1994, the Commission issued a no-action letter allowing the implementation of a risk-based haircut pilot program. *See* letter from Brandon Becker, Director, Division, Commission, to Mary Bender, First Vice President, Division of Regulatory Services, CBOE, and Timothy Hinkes, Vice President, The OCC, dated March 15, 1994. The risk-based haircut program took full effect on September 1, 1997. *See* ''Net Capital Rule,'' Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997).

[19] *See* Federal Reserve System, ''Securities Credit Transactions; Borrowing by Brokers and Dealers''; Regulations G, T, U and X; Docket Nos. R–0905, R–0923 and R–0944, 63 FR 2806 (January 16, 1998).

[20] *See* letter from the FRB to James E. Newsome, Acting Chairman, CFTC, and Laura S. Unger, Acting Chairman, Commission, dated March 6, 2001.

[21] *See* ''The Brady Report,'' Report of the Presidential Task Force on Market Mechanisms, January 1988, p. 59 and pp. 65–66.

[22] *See* ''The October 1987 Market Break: Report by the Division,'' Commission, February 1988, pp. 10–57. *See also* the interim report of the ''Working Group on Financial Markets,'' (Department of the Treasury, CFTC, Commission and FRB), May 1988, Appendix D III A.

margined on a good faith basis if hedged with a listed option.[23]

2. Statutory Basis

The Exchange believes that the proposed rule change described above is consistent with the provisions of section 6(b) of the Act,[24] in general, and specifically furthers the objectives of section 6(b)(5) of the Act,[25] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest. The proposed portfolio margin rule change is intended to promote greater reasonableness, accuracy and efficiency in respect of Exchange margin requirements for complex, multiple position listed index option strategies, and to offer a cross-margin capability with related index futures positions in eligible accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B)institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–03 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7609 Filed 3–28–02; 8:45 am]

BILLING CODE 8010–01–P

[23] *See* ''OTC Derivatives Dealers,'' Securities Exchange Act Release No. 40594, (October 23, 1998), 63 FR 59362 (November 3, 1998).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45638; File No. SR–NASD–2002–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Certificates of Designation for Preferred Stock of the Nasdaq Stock Market, Inc.

March 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. 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

Nasdaq is filing Certificates of Designations, Preferences and Rights (''Certificates of Designation'') of Series A Cumulative Preferred Stock (''Series A Preferred'') and Series B Preferred Stock (''Series B Preferred,'' collectively ''Series A and B Preferred'') authorized to be issued to the NASD. The Series A and B Preferred will be issued as part of a transaction designed to reduce the NASD's economic interest in Nasdaq to the greatest extent practicable while maintaining the NASD's voting control until Nasdaq begins operating as a national securities exchange. Under Section 151(g) of the General Corporation Law of the State of Delaware (''Delaware Law''), such Certificates of Designation are deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation. Pursuant to Rule 19b–4(f)(3),[3] Nasdaq has designated this filing as one concerned solely with the administration of the self-regulatory organization because the authorization and issuance of the Series A and B Preferred result in no substantive change in the NASD's control of Nasdaq until exchange registration, and as such, the filing is immediately effective. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing the Certificates of Designations described below. Under Article Fourth, Paragraph B of Nasdaq's Restated Certificate of Incorporation, the Nasdaq Board may authorize the issuance of preferred stock and fix its designation, powers, preferences and

[3] 17 CFR 240.19b–4(f)(3).

rights, as well as any qualifications, limitations, and restrictions on it. Under Delaware Law, such Certificates of Designation are deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation, and as such, Nasdaq is filing the Certificates of Designation with the Commission.

The issuance of the Series A and B Preferred is part of a transaction between the NASD and Nasdaq to reduce the NASD's ownership interest in Nasdaq while maintaining the NASD's control over Nasdaq until exchange registration. The Series A Preferred will pay a dividend and is non-voting unless Nasdaq fails to pay a timely dividend. In such case, Nasdaq must increase the size of its Board to add two directors elected by the holders of the Series A Preferred. Such directors would be required to resign upon the payment of the dividend or the redemption of the Series A Preferred. The NASD may not transfer the Series A Preferred without the prior written consent of Nasdaq for a period of one year from its issuance.

Nasdaq is currently discussing with the Commission staff how Nasdaq intends to meet its obligation for fair representation of members on its Board under Section 6(b)(3) of the Act [4] if Nasdaq obtains approval of its exchange registration application. As a result of these discussions, Nasdaq may submit to the Commission amendments to its By-Laws with respect to its Board composition. The potential By-Law amendments under discussion could require the election of additional Board members if the Series A Preferred holder's right to elect Board members is triggered to ensure that the fair representation obligation is met at all times.

The Series B Preferred is a single share designed to ensure that the NASD maintains voting control over Nasdaq until exchange registration. The Series B Preferred is not transferable and must be redeemed when Nasdaq begins operating as a national securities exchange. The Series B will vote, together as one class with Nasdaq's common stock, on all matters submitted to a vote of holders of common stock. The Series B Preferred will have variable voting rights such that the number of votes entitled to be cast by the holder of the Series B Preferred shall equal that number of votes that, together with votes otherwise entitled to be cast by the holder of the Series B Preferred at such meeting, whether by virtue of share ownership, proxies, voting trust arrangements or otherwise, entitle the holder to exercise one vote more than one-half of all votes entitled to be cast. These voting rights will terminate automatically upon Nasdaq commencing operation as a national securities exchange.

The Series A and B Preferred have no effect on the voting trust that governs the warrants to purchase Nasdaq common stock that were sold by the NASD in two private placements that closed in June 2000 and January 2001.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Sections 15A(b)(2) and (6) of the Act,[5] which require, among other things, that the Association be so organized and have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act, and that the Association's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the issuance of this preferred stock will result in no substantive change in its current relationship to the NASD; as under the current ownership structure, the NASD will continue to control Nasdaq until exchange registration.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is concerned solely with the administration of the self-regulatory organization and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (f)(3) of Rule 19b–4 [7] thereunder. 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–2002–36 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7610 Filed 3–28–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b)(3).

[5] 15 U.S.C. 78*o*–3(b)(2) and (6).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45622; File No. SR–Phlx–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modified Capitalization Weighting Methodology for Index Options

March 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on March 1, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1009A(b), Designation of the Index, to include modified capitalization weighting as an approved weighting methodology for index options.

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 Phlx 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 Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase and diversify the number and types of securities products the Exchange may offer to the investing public by including modified capitalization weighting as a methodology for index options under Phlx Rule 1009A(b). Increasingly, the Exchange receives requests to trade new indexes using the modified capitalization weighting methodology; accordingly, in order to accommodate those requests in a timely manner and respond to market demand, the Exchange seeks to permit this calculation methodology for narrow-based indexes. The Exchange wishes to accommodate these requests, and proposes to add this methodology to the existing narrow based criteria set forth in Phlx Rule 1009A(b) which permits the listing of options on stock index groups pursuant to Rule 19b–4(e) under the Act. Currently, Phlx Rule 1009A requires an index to be calculated using the capitalization-weighted, price-weighted, or equal dollar-weighted methodologies. Use of the modified capitalization weighted methodology should allow the Exchange greater flexibility in developing indexes and facilitate the listing of options on stock industry index groups that more accurately reflect the industry represented by the index.

When determining the value using capitalization weighting methodology, the following calculation applies: multiply the primary exchange regular way last sale price of each component security by the number of shares outstanding, add the result for each product and divide the sum by the current index divisor. The index value for a modified capitalization-weighted index is calculated in a similar manner. However, instead of using the actual number of shares outstanding, an adjusted number of shares outstanding are used in the calculation. (Thus, the following calculation applies: multiply the primary exchange regular way last sale price of each component security by an adjusted number of shares outstanding, add the results for each product, and then divide the sum by the current index divisor). The adjusted number of shares is determined by a proprietary algorithm. When using the modified capitalization weighting the Exchange will use a calculation methodology that will be clearly defined, and will consist of objective standards in accordance with the generic criteria set forth in Phlx Rule 1009A. In addition, the terms of the index will be defined in the marketing materials describing a new index and in the circulars that the Exchange distributes to its members upon the launch of a new index option.

The modified capitalization weighting methodology uses an adjusted number of shares outstanding to prevent component companies with a relatively high market capitalization from representing an inordinately large portion of an index's value. For example, inclusion of a company that is highly capitalized, in relation to the other smaller capitalized companies in the index, may result in the higher capitalized company's representation in the index exceeding 25% of the index's value. Thus, options on these indexes could not be listed on the Phlx. However, because use of the modified capitalization methodology permits a reduction in the higher capitalized company's representation in the index to an amount less than 25% of the index's value, the listing criteria of Phlx Rule 1009A(b)(6) are satisfied. Therefore, modifying the capitalization amounts of the securities underlying an index can prevent an individual stock from inappropriately skewing the performance of an entire index, thus market accuracy and transparency should be correspondingly enhanced by use of the modified capitalization methodology. Currently, indexes such as the Nasdaq 100 [3] and Fortune e–50 [4] utilize modified capitalization weighting. Thus, it is an established calculation methodology that the Exchange seeks to capture in its listing standards.

Additionally, the Exchange will review the component weightings of indexes employing the modified capitalization weighting methodology at least semi-annually (or pursuant to then-existing standards), and if necessary, adjust them to ensure that the index continues to meet the weighting guidelines. Also, adjustments will be made on an intra-semi-annual basis, as necessary, to reflect corporate actions such as, share issuances, repurchases and other events of significance.

2. Statutory Basis

For these reasons, the Exchange believes that this proposal is consistent with Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in that this proposal is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect the investors and the public interest, by encouraging and adding flexibility to the development of new indexes, thereby, increasing the amount of new products available to the investing public, consistent with the purposes of option listing standards. Specifically, the Exchange seeks to list new index options based on this calculation methodology.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[3] The Nasdaq–100®, Nasdaq–100 Index®, and Nasdaq® are trade or service marks of The Nasdaq Stock Market, Inc.

[4] The Fortune e–50® is a trade or service mark of the American Stock Exchange LLC.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and subparagraph (f)(6) of Rule 19b–4 thereunder. [8] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission notes that under Rule 19b–4(f)(6)(iii),[9] the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate that the proposed rule change become operative immediately, which the Phlx believes is consistent with investor protection and the public interest. In particular, because the proposed rule change is significantly similar to the rules of another self-regulatory organization already approved by the Commission,[10] the Exchange requests that Commission accelerate the operative date to promptly begin eligibility of modified capital weighted indexes for option trading.

The Commission believes that it is consistent with the protection of investors and the public interest to designate the proposal immediately operative.[11] Accelerating the operative date will permit the Exchange to implement Phlx Rule 1009(b) without undue delay. For this reason, the Commission finds good cause to designate that the proposal become operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with 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 Section. 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–2002–14 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7567 Filed 3–28–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] *See* Securities Exchange Act Release No. 41557, June 24, 1999, 64 FR 36055 (July 2, 1999) (Order approving File No. SR–Amex–99–09 to allow modified equal-dollar and modified capitalization weighting calculation methodologies for narrow-based index options on the American Stock Exchange LLC).

[11] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45629; File No. SR–Phlx–2001–89]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to an Increase in the Maximum Guaranteed Size for AUTO–X Eligible Orders in Options on the Nasdaq-100 Index Tracking Stock (''QQQ'') from 100 Contracts to 250 Contracts

March 22, 2002.

I. Introduction

On September 27, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase its automatic execution guarantee for options overlying the QQQ from 100 contracts to 250 contracts. On October 9, 2001, the Phlx filed Amendment No. 1 to the proposed rule change.[3] On November 15, 2001, the proposed rule change and Amendment No. 1 were published for public comment in the **Federal Register**.[4] The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The Exchange proposes to increase the maximum order size eligibility for its automatic execution system (''AUTO–X'') in QQQ options from 100 contracts to 250 contracts. Under the rules of the Phlx, through AUTOM,[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 5, 2001 (''Amendment No. 1''). In Amendment No. 1, the Phlx changed the status of the proposal from a filing made pursuant to Section 19(b)(3)(A) of the Act to a filing made pursuant to Section 19(b)(2) of the Act.

[4] *See* Securities Exchange Act Release No. 45046 (November 7, 2001), 66 FR 57500.

[5] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually or routed to AUTOM's automatic execution feature, AUTO–X, if they are eligible for execution on AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features

Continued

orders are routed from member firms directly to the appropriate specialist on the trading floor. Of the public customer market and marketable limit orders routed through AUTOM, certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. These orders are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.[6]

The Exchange represents that AUTO–X affords prompt and efficient automatic executions at the disseminated quotation price on the Exchange. Therefore, the Exchange believes that increasing automatic execution levels for eligible orders in QQQ options from 100 contracts to 250 contracts should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase in the automatic execution levels in QQQ options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQ options.

The Exchange notes that there are many safeguards incorporated into Exchange rules to ensure the appropriate handling of AUTO–X orders. For example, Phlx Rule 1080(f)(iii) states that the specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs execution guarantees and requires the trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. In addition, Phlx Options Floor Procedure Advice F–7 provides that the size of any disseminated bid or offer by the Exchange shall be equal to the AUTO–X guarantee for the quoted option and shall be firm, except that the disseminated size of bids and offers of limit orders on the book shall be 10 contracts and shall be firm, regardless of the actual size of the orders. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

The Wheel is a mechanism that allocates AUTO–X trades among specialists and Registered Options Traders (''ROTs'').[7] An ROT has discretion to participate on the Wheel to trade any option class to which he is assigned. The Exchange states that an increase in the maximum AUTO–X order size in QQQ options would not prevent an ROT from declining to participate on the Wheel. The Exchange states that, because the Wheel rotates in two-lot to ten-lot increments depending upon the size of the order,[8] no single ROT will be allocated the entire 250 contracts.

The Exchange also has procedures that permit a specialist to disengage AUTO–X in extraordinary circumstances.[9] The Exchange represents that AUTOM users will be notified of such circumstances.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital requirement respecting ROTs.[10] Furthermore, an ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. The Exchange believes that clearing firm procedures address the issue of whether an ROT has the financial capability to support the AUTO–X trading of orders in QQQ options as large as 250 contracts.

The Exchange believes that automatic execution of orders in QQQ options for up to 250 contracts should provide customers with quicker executions for a larger number of orders by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. The Exchange also believes that increasing the AUTO–X maximum order size in QQQ options should not impose a significant burden on operation or capacity of the AUTOM system and will give the Exchange better means of competing with other options exchanges for order flow.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[11] Among other provisions, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.[12]

While increasing the maximum order size limit in QQQ options from 100 contracts to 250 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the Phlx will need to monitor and address. Increasing the maximum order size for QQQ options will make a larger number of QQQ option orders eligible for AUTO–X. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. The specialists and ROTs signed onto AUTO–X will be exposed to the financial risks associated with larger-sized orders in QQQ options being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO–X, the greater the risk the specialists and ROTs must be willing to accept. The Commission does not believe that, because the Phlx's Options Committee determines to approve orders as large as 250 contracts in QQQ options as eligible for AUTO–X, the Options Committee or any other Phlx committee or officials should disengage AUTO–X more frequently by, for example, declaring an ''extraordinary circumstance.''[13] Disengaging AUTO–X can negatively affect investors by making it slower and less efficient to execute their orders. It is the Commission's view that the Phlx, when increasing the maximum size of orders that can be sent through AUTO–X, should not disadvantage all customers—the vast majority of whom enter orders for less than 250 contracts

and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[6] *See* Phlx Rule 1080(c).

[7] Unlike ROTs, specialists are required to participate on the Wheel. *See* Phlx Rule 1080(g).

[8] *See* Exchange Options Floor Procedure Advice F–24(e).

[9] *See* Phlx Rule1080(e) and Exchange Options Floor Procedure Advice A–13.

[10] *See* Phlx Rule 703.

[11] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The Phlx has filed a proposed rule change (File No. SR–Phlx–2001–27) with the Commission that would specify the procedures governing the disengagement of AUTO–X for ''extraordinary circumstances,'' define what constitutes ''extraordinary circumstances,'' and require the documentation of any action taken to disengage AUTO–X. The proposed rule change was filed pursuant to the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282) and is pending with the Commission.

in QQQ options—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[14]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR-Phlx-2001–89), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7612 Filed 3–28–02; 8:45 am]

BILLING CODE 8010–01–U

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3398]

State of Ohio

Lorain County and the contiguous counties of Ashland, Cuyahoga, Erie, Huron, and Medina in the State of Ohio constitute a disaster area due to damages caused by a fire at the Fairway Manor Apartments on March 9, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 20, 2002 and for economic injury until the close of business on December 21, 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.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere—*6.625%*

Homeowners Without Credit Available Elsewhere—*3.312%*

Businesses With Credit Available Elsewhere—*7.000%*

Businesses and Non-Profit Organizations Without Credit Available Elsewhere—*3.500%*

Others (Including Non-Profit Organizations) With Credit Available Elsewhere—*6.375%*

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—*3.500%*

The number assigned to this disaster for physical damage is 339805, and for economic injury the number is 9O9600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 21, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–7642 Filed 3–28–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.125 (5⅛) percent for the April–June quarter of FY 2002.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 02–7721 Filed 3–28–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3965]

Culturally Significant Objects Imported for Exhibition Determinations: ''Masterpieces and Master Collectors: Impressionist and Early Modern Paintings from the Hermitage and Guggenheim Museums''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that two additional objects to be included in the exhibition ''Masterpieces and Master Collectors: Impressionist and Early Modern Paintings from the Hermitage and Guggenheim Museums,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Hermitage Museum, Las Vegas, NV, from on or about April 9, 2002, to on or about August 12, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 25, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–7643 Filed 3–28–02; 8:45 am]

BILLING CODE 4710–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Aviation Proceedings, Agreements Filed During the Week Ending March 15, 2002

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–2002–11825.

Date Filed: March 12, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC12 NMS–AFR 0135 dated 15 March 2002, Mail Vote 210—TC12 Mid Atlantic-Africa, Special Passenger Amending Resolution 010j r1–r6. PTC12 NMS–AFR 0136 dated 15 March 2002, Mail Vote 211—TC12 Mid Atlantic-Africa, Special Passenger Amending Resolution 010k r7–r12. Intended effective date: 15 April 2002, 30 April 2002.

Docket Number: OST–2002–11849.

Date Filed: March 14, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC12 MEX–EUR 0047 dated 19 February 2002, TC12 Mexico-Europe Resolutions r1–r20, Minutes—PTC12 MEX–EUR 0048, dated 15 March 2002. Tables—PTC12 MEX–EUR Fares 0019,

dated 22 February 2002. Intended effective date: 1 May 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–7716 Filed 3–28–02; 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 March 15, 2002

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–2002–11861.

Date Filed: March 15, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 5, 2002.

Description: Application of Sun Country Airlines, Inc. (Sun Country) and MN Airlines, LLC (MNA), pursuant to 49 U.S.C. 41102 and Subpart B, requesting transfer of Sun Country's air carrier certificate authority to MNA.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–7717 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD17–02–001]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of the application for recertification submitted by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) for March 1, 2002 through February 28, 2003. Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Prince William Sound.

DATES: Comments must reach the Seventeenth Coast Guard District on or before April 29, 2002.

ADDRESSES: You may mail your comments to the Seventeenth Coast Guard District (mor), P.O. Box 25517, Juneau, AK 99802–5517. You may also deliver them to the Juneau Federal Building, room 753, 709 W. 9th St, Juneau, AK between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Seventeenth Coast Guard District maintains the public docket for this recertification process. Comments regarding recertification will become part of this docket and will be available for inspection or copying at the Juneau Federal Building, room 753, 709 W 9th St.

A copy of the application is also available for inspection at the Prince William Sound Regional Citizens' Advisory Council Offices at 3709 Spenard Road, Suite 100, Anchorage, AK 99503 and 339 Hazelet, Valdez, AK 99686. The telephone number in Anchorage is (907) 277–7222 and the telephone number in Valdez is (907) 835–5957.

FOR FURTHER INFORMATION CONTACT: For questions on viewing or submitting material to the docket contact LT Ryan Murphy, Seventeenth Coast Guard District (mor), (907) 463–2817.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. It solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of PWSRCAC. Persons submitting comments should include their names and addresses, identify this notice (CGD17–02–001) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (m), Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802–5517. The request should include reasons why a hearing would be beneficial.

If there is sufficient evidence to determine that oral presentations will aid this recertification process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36505), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act. Most recently, on December 28, 2000 (65 FR 82451) the Coast Guard published a proposal and request for comments to streamline the RCAC certification process. The comments received on that proposal are under review prior to implementing changes to the certification process.

The Coast Guard has received an application for certification of PWSRCAC, the currently certified advisory group for the Prince William Sound region. In accordance with the review and certification process contained in the policy statement, the Coast Guard announces the availability of that application.

At the conclusion of the comment period, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify PWSRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: March 4, 2002.

T.J. Barrett,

Rear Admiral, Coast Guard Commander, Seventeenth Coast Guard District.

[FR Doc. 02–7570 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–8229]

Notice of Availability, Final Programmatic Environmental Impact Statement for the Integrated Deepwater System Project

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Final Programmatic Environmental Impact Statement (PEIS) on the Integrated Deepwater System Project. This PEIS covers general issues in a broad program-oriented analysis encompassing the replacement systems proposed by industry and the No-action alternative. The Coast Guard seeks public and agency input on the Final PEIS.

DATES: The PEIS will be available on March 29, 2002. Comments must reach the Coast Guard on or before April 29, 2002.

ADDRESSES: Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility [USCG–2000–8229], US Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available along with the Final Programmatic Environmental Impact Statement for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, expect for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated statement, call LCDR Eric Johnson, Deepwater Environmental & Facilities Planner by telephone at 202–267–1665, or by e-mail at *ejohnson@comdt.uscg.mil* or at the Coast Guard's Deepwater EIS Web page at *http://www.deepwatereis.com/.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

NEPA provides for a 30-day comment period after publication of the Final PEIS, during which the public may comment on the adequacy of responses to comments and the Final PEIS. Persons submitting comments should include their names and addresses, identify the docket number [USCG–2000–8229], and the reason for each comment. You may submit your comments by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address given under Addresses, but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. For additional information about this notice of the Programmatic Environmental Impact Statement, contact Joan Lang, Deepwater Program NEPA Coordinator (under contract to the Coast Guard), 202–267–0284 or via e-mail at *jlang@comdt.uscg.mil.*

Proposed Action

In accordance with section 202[2][c] of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), Department of Transportation (DOT) Order 5610.1C (Procedures for Considering Environmental Impacts), and Coast Guard Policy (NEPA: Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D), the Coast Guard has prepared a Final PEIS on the Deepwater Program. The purpose of a PEIS is to develop a high-level approach and direction for implementing a broad policy or program. The Deepwater Program meets those criteria. As a first tier EIS, this PEIS covers general issues in a broader program-oriented analysis encompassing the replacement systems proposed by industry and the No-action alternative. Subsequent NEPA documentation will concentrate on specific implementing actions, such as home basing of new ships and aircraft, as required.

The Coast Guard published a Notice of Intent and Request for Public Comments on November 9, 2000 (65 FR 67441). That same Notice included the dates and locations of several meetings that were held around the country to accept comments on what the Coast Guard should consider in its PEIS. During this scoping process, and based on Federal Agency comments, it was determined that the PEIS should address two alternatives: Action and No-action. The Action Alternatives includes the proposed system replacements discussed in the NOI. The Coast Guard determined that the best way to describe the impacts of the Action Alternative in the programmatic EIS was by combining all of the proposals into ranges of asset quantities and types and ranges of environmental impacts. This approach protects the procurement-sensitive information regarding the specific number and types of assets proposed by each industry team. However, to more accurately identify potential environmental impacts, the actual numbers and types of each teams' assets were used in the impact modes.

The Coast Guard's ability to predict future environmental impacts of this multi-decade acquisition with 100% accuracy is drastically reduced by uncertainties with regard to funding, technology, political, social and logistic changes. When viewed from a programmatic level, these uncertainties more than outweigh any differences that may exist among the various proposed system replacements. Therefore, the use of ranges to show possible impacts from the two alternatives provides an analysis commensurate with the level of detail of the decision being made, protects procurement-sensitive information, and provides the public with sufficient information to submit informed comments.

The specific industry team proposal information will be maintained in the

administrative record for Coast Guard agency use only, as described in the NOI.

The Coast Guard published a Notice of Availability of the Draft Programmatic Environmental Impact Statement on October 26, 2001 (66 FR 54324). Comments were originally due on December 10, 2001. However, due to delivery problems resulting from anthrax concerns, comments were received in January that had been mailed prior to the original deadline. These comments were accepted and included in the Final PEIS. A total of 28 letters were received from various agencies and the public. All comments are discussed, along with any changes made in response to the comments, in Appendix M of the Final PEIS. No requests for public hearings were received.

After the 30-day comment period described in the *Request for Comments* section of this notice, a Record of Decision (ROD) detailing the Coast Guard's decision of the selected alternative will be prepared and published in the **Federal Register**. The entire ROD will be made available for public review at that time.

Dated: March 13, 2002.

P.M. Stillman,

Rear Admiral, U.S. Coast Guard, Program Executive Officer, Integrated Deepwater System.

[FR Doc. 02–7569 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–01–10293 (PD–28(R))]

Town of Smithtown, New York Ordinance on Transportation of Liquefied Petroleum Gas

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Local Laws Affected: Smithtown Town Code Sections 164–108 and 164–109.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Modes Affected: Highway.

SUMMARY: Federal hazardous material transportation law preempts:

(1) The requirement in Section 164–108 of the Smithtown Town Code for a permit to deliver liquefied petroleum gas (LPG) within the Town of Smithtown with respect to trucks that are based outside of Smithtown because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside Smithtown.

(2) the requirement in Section 164–109 of the Smithtown Town Code for a certificate of fitness insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 164–109 imposes on drivers of motor vehicles used to deliver LPG more stringent training requirements than provided in the HMR.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

The Town of Smithtown, New York (the Town) has asked RSPA to determine whether Federal hazardous material transportation law preempts requirements in Sections 164–108 and 164–109 of the Town Code for permits and ''certificates of fitness'' for the delivery of LPG within the Town. According to the Town's application these requirements were adopted in 1983, and they are similar to provisions of Nassau County Ordinance No. 344–1979 that RSPA considered in Preemption Determination (PD) No. 13(R), Nassau County, New York Ordinance on Transportation of Liquefied Petroleum Gases, 63 FR 45283 (Aug. 25, 1998), decision on petition for reconsideration, 65 FR 60238 (Oct. 10, 2000), complaint for judicial review dismissed, *Office of the Fire Marshal of the County of Nassau* v. *U.S. Dep't of Transportation,* Civil Action No. 00–7200 (E.D.N.Y. Mar. 18, 2002). The Town is located on Long Island in Suffolk County, which is adjacent to Nassau County.

In PD–13(R), RSPA found that, as enforced and applied to vehicles based outside Nassau County, that County's permit requirement is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside the County. 65 FR at 60245. RSPA also found that Nassau County's certificate of fitness requirement is preempted insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG because it imposes more stringent training requirements than provided in the HMR. 63 FR at 45288.

In a notice published in the **Federal Register** on August 9, 2001, RSPA invited interested persons to submit comments on the Town's similar permit and certificate of fitness requirements. 66 FR 41931. In response to that notice, RSPA received written comments from National Tank Truck Carriers, Inc. (NTTC) and the National Propane Gas Association (NPGA). The Town submitted a response to NTTC's comments.

RSPA believes that it received all comments on the Town's application despite the disruption of mail delivery to DOT between mid-October and the end of November 2001. On October 25, 2001, DOT posted on its Docket Management System Web site *(http://dms.dot.gov)* a notice that comments could also be submitted in person, electronically, and by alternate delivery services, and that DOT would consider late-filed comments to the extent possible. *See also* DOT's Notice that ''we will do everything possible to ensure that we consider comments that we otherwise would have received before the close of the comment period,'' and advising interested persons ''to check our Dockets Web page * * * to see if we received and processed your document(s).'' 67 FR 1391, 1392 (Jan. 10, 2002). RSPA's procedural regulations specifically provide that ''Late-filed comments are considered so far as practicable'' in a preemption determination proceeding. 49 CFR 107.205(c)

II. Federal Preemption

RSPA explained in its August 9, 2001 notice that 49 U.S.C. 5125 contains express preemption provisions that are relevant to this proceeding. 66 FR at 41933–34. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under Section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation

prescribed under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' 49 CFR 107.202(d).

Subsection (g)(1) of 49 U.S.C. 5125 provides:

A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Public Law 103–272, 108 Stat. 745.)

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 CFR 107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(g)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism.'' 64 FR 43255 (August 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Discussion

A. Inspection and Permit Requirement

According to the Town, the relevant provisions of Section 164–108 are as follows:

A. No person, firm or corporation shall use or cause to be used any motor vehicle, tank truck, tank truck semitrailer or tank truck trailer for the transportation of liquefied petroleum gas unless, after complying with these regulations, a permit to operate any such vehicle has first been secured from the Fire Prevention Division. No permit shall be required under this section for any motor vehicle that is used for the transportation of LPG not operated or registered by an authorized dealer, in containers not larger than 10 gallons' water capacity each (approximately 34 pounds' propane capacity) with an aggregate water capacity of 25 gallons (approximately 87 pounds) or when used in permanently mounted containers on the vehicle as motor fuel. This section shall not apply to any motor vehicle, tank truck, tank truck semitrailer or tank truck trailer traveling through the town and making no deliveries within the town.

B. Permits shall be issued to a vehicle for the transportation of LPG only after a full safety inspection of the vehicle by the Fire Prevention Division and the Fire Marshal approves of the issuance of the permit.

With its application, the Town submitted an affidavit of its Chief Fire Marshal stating that the inspection and permit requirement in Section 164–108 applies to both bulk carriers and rack trucks that are used to deliver LPG within the Town, but that a permit is not required for ''vehicles that are only passing through the Town of Smithtown and not making any deliveries within the Town.'' It appears that a truck would have to be inspected in both the Town and Nassau County (and hold a permit from each) in order to make propane deliveries in both jurisdictions.

The Town Code provides that a permit is valid for one year (Section 164–108.C.), but it does not refer to fees. According to the Chief Fire Marshal, the permit fee is $150 for a new permit, and $75 for a renewal, and these fees ''are used to offset the work performed by the Fire Prevention Division,'' such as ''responding to hazardous material incidents, including, but not limited to, gas leaks and spills.''

The Town acknowledged that ''Section 164–108 is essentially identical'' to the inspection and permit requirement of Nassau County that RSPA has found to be preempted with respect to trucks based outside the jurisdiction performing the inspections and issuing the permit. Nonetheless, the Town asserted in its application that its inspection and permit requirement ''is distinguishable from the Nassau County Ordinance'' because its inspections do not last ''several hours''; they ''are scheduled in advance and scheduling is flexible.'' In his affidavit, the Chief Fire Marshal also stated:

Appointments are available on a monthly basis (with the exception of winter months at the request of the LPG companies) and are made one month prior to the expiration of the permit. Adjustments in scheduling are made for inspections that would be due to expire during a winter month. In order to eliminate the delay in having to wait for the inspection to take place, no more than four trucks are scheduled to be inspected within a 30 minute time frame.

In its responding comments, the Town again argued that RSPA based its finding in PD–13(R) that Nassau County's inspection and permit requirement is preempted with respect to trucks based outside the County ''on evidence that transportation of propane was interrupted for several hours or longer while Nassau County conducted inspections and issued permits.'' The Town stated that, ''[u]nlike the Nassau County inspections, the Town of Smithtown conducts its inspections within a thirty-minute time frame,'' and it referred to the Chief Fire Marshal's affidavit indicating that the inspection of a bulk carrier takes ''from 15 to 20 minutes'' and only ''10 to 15 minutes'' for a rack truck.

NTTC stated that RSPA's decision in PD–13(R) provides the ''ground rules'' regarding a local requirement for an inspection of ''hazmat-laden vehicles.'' It quoted the following language:

A city or county may apply an annual inspection requirement to trucks based outside its jurisdictional boundaries only if the city or county can actually conduct the equivalent of a ''spot'' inspection upon the truck's arrival within the local jurisdiction. The city or county may not require a permit or inspection for trucks that are not based within the local jurisdiction if the truck must interrupt its transportation of propane for several hours or longer in order for an inspection to be conducted and a permit to be issued.

65 FR at 60244.

NPGA agreed that the Smithtown permit requirement ''is substantively identical'' to the same requirement of Nassau County that RSPA found to be preempted in PD–13(R) with respect to trucks based outside the County. NPGA urged RSPA to extend its decision in PD–13(R) to ''companies based outside of the County and those based within the County'' because NPGA ''believes that, under most conditions, permit requirements such as the one [in Nassau County] create obstacles to the safe and efficient transportation of propane for delivery companies based within the jurisdiction.''

NPGA disagreed with RSPA's conclusion in PD–13(R) that it should be possible to schedule an inspection of a truck based within the inspecting jurisdiction ''at a time that does not disrupt or unnecessarily delay deliveries.'' 65 FR at 60243. It stated that, ''[d]uring peak propane delivery seasons, it may be impossible for a propane retailer to take a propane vehicle out of service for inspection.'' NPGA contends that ''the same delay of a loaded vehicle with a hazardous material could occur,'' whether the truck is based within or outside of the inspecting jurisdiction. It stated that, if the ''tens of thousands of state, county and local jurisdictions nationwide . . . required inspections in addition to those already required under the HMRs, the delay of hazardous materials transportation would be indisputable.'' NPGA also stated that ''the Nassau County and Smithtown inspection requirements are duplicative'' of the annual and roadside inspections required under 49 CFR part 396 and the inspection, repair and maintenance requirements for cargo tanks in 49 CFR part 180.

RSPA considers that vehicle and container inspections are an integral part of a program to assure the safe transportation of hazardous materials in compliance with the HMR (including those parts of the Federal Motor Carrier Safety Regulations in 49 CFR parts 390–397 incorporated by reference in the HMR, at 49 CFR 177.804). *See*, for example, 49 CFR 396.17 (annual inspection of motor vehicle); 396.11 and 396.13 (daily inspection by driver); 180.407 (periodic inspection of cargo tanks); 173.34(e) (periodic inspection of cylinders).

RSPA has also specifically found that inspections conducted by State or local governments ''to assure compliance with Federal or consistent requirements are themselves consistent'' with Federal hazardous material transportation law and not preempted. IR–20, Triborough Bridge and Tunnel Authority Regulations, etc., 52 FR 24396, 24398 (June 30, 1987), quoted in PD–4(R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48933, 48940 (Sept. 20, 1993), decision on petition for reconsideration, 60 FR 8800 (Feb. 15, 1995). Accordingly, RSPA ''has encouraged States and local governments to adopt and enforce the requirements in the HMR 'through both periodic and roadside spot inspections.' '' PD–4(R), 58 FR at 48940, and PD–13(R), 63 FR at 45286, quoting from Waiver of Preemption Determination No. 1, New York City Fire Department Regulations, etc., 57 FR 23276, 23295 (June 2, 1992).

To be consistent with Federal hazardous materials transportation law and the HMR, however, a non-Federal inspection of a vehicle or container used to transport a hazardous material must not conflict with the requirement in 49 CFR 177.800(d):

All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

In PD–4(R), RSPA determined that Federal hazardous material transportation law preempts a California requirement for an annual inspection of cargo tanks and portable tanks used to transport flammable and combustible liquids. In that situation, the evidence showed that these tanks were not being inspected for several days (or longer) after their arrival in the State, and RSPA

found that ''the instances when a vehicle must wait, or a portable tank must be held, for the arrival of State inspectors from another location create unnecessary delays.'' 58 FR 48941. In PD–13(R), RSPA found a similar problem with Nassau County's annual inspection requirement for trucks used to transport LPG, because the evidence showed that the County could not conduct the equivalent of a ''roadside or spot'' inspection on vehicles arriving in Nassau County from outside the County. 65 FR at 60244.

These principles apply to the Town's permit requirement in Section 164–108 of the Town Code. It is clear that any State or local periodic inspection requirement has an inherent potential to cause unnecessary delays in the transportation of hazardous materials when that requirement is applied to vehicles based outside of the inspecting jurisdiction. The comments submitted in PD–4(R) and PD–13(R) establish that the ''call and demand'' nature of common carriage makes it (1) impossible to predict in advance which vehicles may be needed for a pick-up or delivery within a particular jurisdiction and (2) impractical to have all vehicles inspected every year or, alternatively, have a few vehicles inspected in order to be ''dedicated'' to the inspecting jurisdiction. *See* the discussion in PD–4(R), 58 FR at 48938–41, and PD–13(R), 65 FR at 60242–44. More specific evidence of the effect of the Town's inspection requirement is not necessary.

The inherent potential for unnecessary delay, when a periodic inspection requirement applies to a vehicle based outside the inspecting jurisdiction, is not eliminated by a ''flexible'' scheduling policy. The impracticability of scheduling an inspection in advance of knowing whether a particular truck will be needed to make a delivery within the inspecting jurisdiction creates unnecessary delay—not the time that the inspection actually takes to be conducted. As discussed in PD–4(R) and PD–13(R), that unnecessary delay would be eliminated if the Town performed the equivalent of a spot or roadside inspection, upon the unannounced arrival of a truck carrying LPG.

Whether or not the inspection performed by the Town lasts longer than that performed by the Nassau County Fire Marshal does not distinguish the requirements of the two jurisdictions. In PD–13(R), RSPA did not focus on the actual time that Nassau County took to conduct an inspection but referred to its earlier determinations that ''the minimal increase in travel time when an inspection is actually being conducted, or the vehicle is waiting its ''turn'' for an inspector to finish inspecting another vehicle that arrived earlier at the same facility is not unnecessary delay.'' 65 FR at 60243 and 63 FR 45286, quoting from IR–4(R), 58 FR at 48941.

RSPA appreciates NPGA's argument that the Town's inspections may duplicate inspections performed by the carrier itself or by Federal or State inspectors. Nonetheless, RSPA cannot find that, by itself, a non-Federal inspection requirement is preempted by Federal hazardous material transportation law when the inspection is performed without causing unnecessary delay in the transportation of hazardous material or otherwise creating an obstacle to accomplishing and carrying out that law and the HMR. (In PD–13(R), RSPA specifically noted that a separate statutory procedure exists for DOT to review and determine whether a State or local inspection requirement is preempted by 49 U.S.C. 31142. 65 FR at 60243.) Under the principles set forth in RSPA's decisions in PD–4(R) and PD–13(R), the potential for duplication is limited to the jurisdiction in which the vehicle is based. Under these circumstances, there is no basis for NPGA's concern that numerous States, counties, and other local jurisdictions may require periodic inspections of the same vehicle. Moreover, the limitation on the number of non-Federal inspections that may be performed should also make it feasible for the owner of a truck based within the Town to schedule an inspection outside of the ''peak propane delivery seasons.''

For all the reasons set forth above and in RSPA's prior determinations in PD–4(R) and PD–13(R), RSPA finds that Federal hazardous material transportation law does not preempt the Town's annual permit requirement in Section 164–108 of the Town Code with respect to trucks that are based within the Town. On the other hand, RSPA finds that the Town's annual permit requirement creates an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous materials on vehicles based outside of the Town and, accordingly, Federal hazardous materials transportation law preempts Section 164–108 of the Town Code with respect to trucks based outside of the Town.

B. Certificate of Fitness Requirement

The Town stated that the relevant provisions of Section 164–109, concerning certificates of fitness, are the following:

A. Certificate of fitness required. Any person filling containers at locations where LPG is sold and/or transferred from one vessel into another shall hold a valid certificate of fitness issued by the Fire Prevention Division. Such certificate is subject to revocation by the Fire Prevention Division at any time where the certificate holder displays evidence of noncompliance with the provisions of this chapter.

E. The certificate of fitness shall be given full force and effect for a period of three years.

I. Certificate of fitness issued. A certificate of fitness will be required of any person performing the following activities:

(1) Filling containers permanently located at consumer sites from a cargo vehicle.

(2) Selling LPG or transferring LPG from one vessel to another.

In its application, the Town stated that two categories of persons must have a certificate of fitness, those who ''handle (fill and sell) LPG at commercial dispensing stations'' and ''operators of vehicles (bulk and rack type carriers) used for domestic delivery of LPG.'' The Town's Chief Fire Marshal explained that a ''Type One'' certificate is required for ''individuals who fill and sell propane tanks at a fixed site,'' and the persons who ''transfer LPG at a fixed site and/or transport and deliver LPG to locations within the Town of Smithtown'' must hold a ''Type Two'' certificate. The Town Code specifies that a certificate of fitness is valid for three years (Section 164–109.E), upon payment of ''the applicable fees'' (Section 164–109.B), which the Chief Fire Marshal states are $150 for the initial issuance and $75 for renewal.

According to the Chief Fire Marshal, both ''a written examination and investigation'' are required to obtain the initial certificate of fitness. He stated that ''testing covers the makeup, uses, and proper handling of the product as outlined within'' the Town's Fire Prevention Code, the New York State Uniform Fire Prevention and Building Code, and standards of the National Fire Prevention Association. He also stated that the ''written exam is a multiple choice exam that lasts approximately 30 minutes. The investigation is a practical test during which the applicant is observed performing the necessary operations.'' The Chief Fire Marshal explained that the written and practical examinations are not required for a renewal or ''when the applicant can produce a valid certificate of fitness from another jurisdiction.''

The Town stated that its certificate of fitness requirement is ''consistent with 49 CFR 172.701 which proscribes only 'minimum training requirements for the transportation of hazardous materials.' '' It stated that its written examination

and investigation are ''in no way duplicative of the training requirements'' in the HMR and address different matters than covered in the HMR: because ''the Town Code deals primarily with the handling of LPG, *i.e.* transporting cylinders and delivering cylinders * * * no conflict exists between the federal code of regulations and the Town Code.''

The Town acknowledged that ''a transporter who delivers LPG must obtain a Type II Certificate of Fitness,'' but stated that ''transporters can anticipate the need to schedule the certification process in advance,'' so there should not be any delay in transportation. It cited the decision in *New Hampshire Motor Transport Ass'n* versus *Flynn*, 751 F.2d 43 (1st Cir. 1984), as upholding a State requirement for hazardous materials and waste transporters to obtain an annual $25 permit or $15 single-trip permit from offices that were not open at night or on weekends.

NPGA stated that RSPA should find that the Town's certificate of fitness requirement is preempted for the same reasons that RSPA found Nassau County's similar requirement to be preempted in PD–13(R). The only difference, as noted by NPGA, is that the Town has two different certificates of fitness, ''one for refillers and one for domestic delivery drivers.'' NPGA also called attention to the decision of a local court that the Town's certificate of fitness requirement is preempted with respect to motor vehicle drivers. *People* versus *Paraco Gas Corp.*, No. SMTO 398–99 (Dist. Ct. Suffolk Co., Mar. 20, 2000).

As discussed in PD–13(R), 63 FR at 45287, the HMR set minimum training requirements for hazmat employees but also contain a specific limitation on additional training that may be required for drivers of motor vehicles transporting hazardous materials. Section 172.701 in the HMR provides that, ''a State may impose more stringent training requirements [on motor vehicle drivers] only if those requirements— (a) Do not conflict with the training requirements in [the HMR]; and (b) Apply only to drivers domiciled in that State.'' As explained in the preamble to RSPA's final rule, this ''language recognizes the traditional regulation by States of their own resident drivers, particularly through drivers' licensing requirements and procedures,'' but it ''does not authorize States to impose [additional training] requirements on non-residents and also does not authorize other governmental agencies to impose requirements.'' 57 FR 20944, 20947 (May 15, 1992), quoted at 63 FR at 45287.

The HMR are consistent with the prohibition against holding a commercial driver's license from more than one State and the requirement that a State must honor a valid commercial driver's license issued by another State that has not been revoked, suspended or canceled. 49 U.S.C. 31311(a)(11), (14), 49 CFR 383.21, 384.214. In this State-administered scheme for licensing drivers of commercial motor vehicles (including those used to deliver propane), there is no room for ''other governmental agencies'' (such as a city or county) to impose additional training requirements, either as part of a licensing procedure or otherwise. Any such additional training requirements are an obstacle to carrying out the Federal hazardous material transportation law and the HMR.

The hazmat employee training requirements in the HMR specifically include testing ''by appropriate means'' in three required areas: general-awareness/familiarization training, function-specific training, and safety training. 49 CFR 172.702(d). Records of training must include a written ''[c]ertification that the hazmat employee has been trained and tested, as required by this subpart.'' 49 CFR 172.704(d). Hazmat training and testing must be conducted ''at least once every three years'' and whenever there is ''a change in job function.'' 49 CFR 172.704(c).

RSPA found that Nassau County's written and practical tests on the use, makeup, and handling of LPG clearly fall within the definition of ''training'' in 49 CFR 172.700(b):

> A systematic program that ensures a hazmat employee has familiarity with the general provisions of this subchapter, is able to recognize and identify hazardous materials, has knowledge of specific requirements of this subchapter applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures, and accident prevention methods and procedures.

See 63 FR at 45287. *Accord*, PD–7(R), Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances, 59 FR 28913, 28919 (June 3, 1994), where RSPA found that Federal hazardous material transportation law preempts Maryland's additional certification requirements for operators of vehicles transporting oil and hazardous wastes, when applied to drivers not domiciled within the State.

When applied to motor vehicle drivers, the Town's certificate fitness requirement conflicts with the limitation against additional training requirements in 49 CFR 172.701 and is an obstacle to accomplishing and carrying out the HMR's training requirements. For that reason, Federal hazardous material transportation law preempts the Town's certificate of fitness requirement in Section 164–109 of the Town Code.

IV. Ruling

Federal hazardous material transportation law preempts:

(1) the requirement in Section 164–108 of the Smithtown Town Code for a permit to deliver liquefied petroleum gas (LPG) within the Town of Smithtown with respect to trucks that are based outside of Smithtown because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside Smithtown.

(2) the requirement in Section 164–109 of the Smithtown Town Code for a certificate of fitness insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 164–109 imposes on drivers of motor vehicles used to deliver LPG more stringent training requirements than provided in the HMR.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision ''in an appropriate district court of the United States . . . not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on March 25, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–7715 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–565 (Sub–No. 7X) and STB Docket No. AB–55 (Sub–No. 605X)]

New York Central Lines, LLC—Abandonment Exemption—in Suffolk County, MA; CSX Transportation, Inc.—Discontinuance of Service Exemption—in Suffolk County, MA

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for NYC to abandon and CSXT to discontinue service over approximately 2.17 miles of railroad between milepost QBG 5.7 and milepost QBG 7.87 in Chelsea, in Suffolk County, MA.[1] The line traverses United States Postal Service Zip Codes 02128 and 02129.

NYC and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on April 30, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 8, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NYC and CSXT have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 5, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NYC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NYC's filing of a notice of consummation by March 29, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.sbt.dot.gov.*

Decided: March 18, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7122 Filed 3–28–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Pursuant to Board authorization in 1998, CSX Corporation, CSXT's parent company, and Norfolk Southern Corporation jointly acquired control of Conrail Inc., and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail have been assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line to be abandoned is included among the property being operated by CSXT pursuant to the NYC operating agreement.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1,100, effective April 8, 2002.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on an information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, FinCEN is soliciting comments concerning FinCEN Form 8300, for use by nonfinancial trades and businesses to report transactions in currency of greater than $10,000.

DATES: Written comments should be received on or before May 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183. *Attention:* PRA Comments—Form 8300. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov* with the caption in the body of the text, ''*Attention:* PRA Comments—Form 8300.''

FOR FURTHER INFORMATION CONTACT: Russell Stephenson, Senior Regulatory Program Analyst, FinCEN, (800) 949–2732, or Laurence Levine, Attorney-Advisor, FinCEN, (703) 905–3590. A copy of the form may be obtained through the Internet at *http://www.IRS.gov.*

SUPPLEMENTARY INFORMATION:

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

OMB Number: 1506–0018.

Form Number: FinCEN Form 8300.

Abstract: The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311, *et seq.*, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311, *et seq.*), appear at 31 CFR part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Bank Secrecy Act was recently amended by section 365 of the USA Patriot Act to add 31 U.S.C. 5331. Under section 5331, any person who is engaged in a trade or business and who, in the course of such trade or business, receives more than $10,000 in coins or currency in one transaction (or two or more related transactions) is required to file a report with respect to such transaction (or related transactions) with the Treasury Department. Reporting under section 5331 does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and its implementing regulations (31 CFR 103.22).

On December 31, 2001, FinCEN issued an Interim Rule (66 FR 67680) and companion Notice of Proposed Rulemaking (66 FR 67685) to implement section 5331. Because section 5331 is substantially similar to 26 U.S.C. 6050I, the Interim Rule provides that persons required to report a transaction under section 5331 must make that report by filing a joint FinCEN/IRS form. The joint form is essentially the same as the Form 8300 previously required to be filed solely under section 6050I of title 26. Under this dual-reporting regime, only one form is required to be filed for a transaction subject to both section 5331 and section 6050I of title 26. Thus, the Interim Rule imposes no new reporting or record-keeping burden on persons required to report transactions under section 5331.

The information collected on FinCEN Form 8300, Report of Cash Payments over $10,000 Received in a Trade or Business, is required to comply with section 5331 and its implementing regulations. The collection of information is mandatory.

Type of Review: New information collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 46,800.

Estimated Total Annual Responses: 140,400.

Estimated Total Annual Burden Hours: FinCEN/IRS Form 8300 imposes no additional burden on the public than that required by its predecessor, IRS Form 8300. For the last estimate of the burden for Form 8300, see 65 FR 3534 (January 21, 2000).

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. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory, law enforcement, and intelligence agencies.

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

Dated: March 22, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–7557 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–02–P

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107–56 (October 26, 2001) (''USA Patriot Act'').

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 21, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2002 to be assured of consideration.

Departmental Offices/Federal Consulting Group

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Customer Satisfaction Measure of Government Web Sites.

Description: The objectives of surveying customers of federal agency web sites are to: (1) Provide information for improving the quality of agency web sites; (2) provide continuous monitoring capabilities; (3) benchmark results against other agencies and private companies; (4) determine how different types of changes to the web site will impact future behaviors; and (5) make the agencies part of a national measure of customer satisfaction with web sites.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 300,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 10,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–7561 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 21, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2002 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0092.
Form Number: None.
Type of Review: Extension.
Title: Libyan Sanctions Regulations.
Description: Submissions will provide the U.S. Government with information to be used in enforcing sanctions against Libya, including prohibitions on travel and financial dealings.
Respondents: Individuals or households, Federal Government.
Estimated Number of Respondents: 5.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5 hours.

OMB Number: 1505–0167.
Form Number: TD F 90–22.52.
Type of Review: Extension.
Title: Cuban Remittance Affidavit.
Description: Submissions will provide the U.S. Government with information to be used in enforcing the prohibitions on the transmission of funds to Cuba by persons subject to U.S. jurisdiction.
Respondents: Individuals or households, business or other for-profit, Federal Government.
Estimated Number of Respondents/Recordkeepers: 1,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 minute.
Frequency of Response: Other (variable).
Estimated Total Reporting/Recordkeeping Burden: 66,667 hours.

OMB Number: 1505–0168.
Form Number: None.
Type of Review: Extension.
Title: Travel Service Provider and Carrier Service Provider Submission.
Description: Submissions will provide the U.S. Government with information to be used in enforcing various economic sanctions programs administered by Office of Foreign Assets Control (OFAC) under 31 CFR Chapter V.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 175.
Estimated Burden Hours Per Respondent/Recordkeeper: 5 minutes.
Frequency of Response: Other (variable).
Estimated Total Reporting/Recordkeeping Burden: 19,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 02–7562 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 19, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2002, to be assured of consideration.

U.S. Mint

OMB Number: 1525–0012.
Form Number: None.
Type of Review: Extension.
Title: Generic Clearance for Voluntary Customer Surveys to Implement E.O. 12862 for the U.S. Mint, Coordinated by Business Alignment for Marketing and Sales and Circulating.
Description: This is a generic clearance for an undefined number of customer satisfaction and opinion surveys or focus group interviews to be conducted over the next three years. The information collected from these surveys will be used to improve Mint products and services.
Respondents: Individuals or households, business or other for-profit.
Estimated Number of Respondents: 10,390.
Estimated Burden Hours Per Response: Varies.
Frequency of Response: Other (varies).
Estimated Total Reporting Burden: 1,553 hours.

Clearance Officer: Mike Green (202) 634–8300, United States Mint, 1730 K. Street, NW, Suite 800, Washington, DC 20212.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 02–7563 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 21, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2002 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1767.
Regulation Project Number: REG–107644–98 Final.
Type of Review: Extension.
Title: Dollar-Value LIFO Regulations; Inventory Price Index Computation Method.
Description: The primary reason for obtaining this information is to ensure compliance by taxpayers electing to use both the LIFO inventory method and the IPIC method of accounting for their

dollar-value inventory pools. Most respondents will be manufacturers, wholesalers, and retailers of tangible personal property.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1545–1769.

Revenue Procedure Number: Revenue Procedure 2002–10.

Type of Review: Extension.

Title: Procedures for IRAs, SEPs and SIMPLEs IRA Plans.

Description: The Economic Growth and Tax Relief Reconciliation Act of 2001 made numerous changes affecting IRAs, SEPs, and SIMPLEs IRA plans. These changes are effective beginning January 1, 2002, and to take advantage of the new law, these retirement plans must be amended and participants notified of the amendments. Revenue Procedure 2002–10 provides guidance on this process and provides an extended period for making the amendments.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms.

Estimated Number of Respondents: 378,000.

Estimated Burden Hours Per Respondent: 20 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 7,371,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–7564 Filed 3–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Cancellation of Customs Broker Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Customs Broker License Cancellations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations (19 CFR Part 111), the following Customs broker licenses are canceled without prejudice. Because previous publication of some records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name, License Number, and Issuing Port

Air-Sea Forwarders, Inc., 03659, San Francisco; Eric T. Buchanan, 14452, Savannah; Burlington Northern Customs Brokerage, 07064, Minneapolis; Carmichael International Service, 05314, San Francisco; James W. Ghedi, 07274, Dallas/Fort Worth; ICE Company, Inc., 06358, Dallas/Fort Worth; Karl Schroff & Associates, 07698, Kansas City; Nations Customs Brokers, Inc., 16320, Miami; Robert J. Schott, 06518, Baltimore.

Some of these entities may continue to provide broker services under a different brokerage license number.

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7536 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Revocation of Customs Broker Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Customs Broker License Revocations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR Part 111), the following Customs broker licenses are revoked. Because previous publication of some records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name	License	Port
Beer, Brian	11541	San Francisco
Brinkley, David H .	09042	Miami
Cohen, George M .	03467	New York
Davila, Jamie	06093	New York
Ramos, Jose A	05284	Dallas/Fort Worth
Unimex Brokerage, Inc .	12585	El Paso

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7533 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Retraction of Revocation or Cancellation Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a list of revoked or cancelled Customs broker licenses.

Name	License	Port Name
Craig International .	13252	Cleveland
Virginia H. Venslovaitis .	11779	Champlain
Robert J. Schott .	05272	Washington

Customs broker licenses numbered 05272, 11779, and 13252 remain valid.

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7534 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Retraction of Revocation Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses.

Tisha Goss, 16852, issued through the Port of Cleveland

This Customs broker license, number 16852, remains valid.

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7535 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Cancellation of License.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.53(g), the following individual Customs broker license has been cancelled due to death of the broker:

Name	License	Port Name
Benjamin J. Hernandez .	09375	Seattle

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7538 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations [19 CFR 111.51(a)], the following Customs broker license is canceled without prejudice.

Name	License	Port
Seino America, Inc .	10930	Los Angeles.

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7537 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 637

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 Form 637, Application for Registration (For Certain Excise Tax Activities).

DATES: Written comments should be received on or before May 28, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Application for Registration For Certain Excise Tax Activities).

OMB Number: 1545–0014.

Form Number: Form 637.

Abstract: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Revenue code section 4101 for purposes of the Federal excise tax on taxable fuel imposed under Code sections 4041 and 4071; and to certain manufacturers or sellers and purchasers that must register under Code section 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Taxable fuel producers are required by Code section 4101 to register with the Service before incurring any tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions, and farms.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 13 hr., 54 min.

Estimated Total Annual Burden Hours: 27,800.

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: March 19, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7651 Filed 3–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0040]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine a lender's and a veteran's request for guaranty of a home loan for home improvements and for the veteran to occupy incomplete property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to ''OMB Control No. 2900–0040'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan, VA Form 26–1847.

OMB Control Number: 2900–0040.

Type of Review: Extension of a currently approved collection.

Abstract: The form serves as the lender's and veteran's request to VA for acceptance of escrow or other arrangement to permit the veteran to occupy a property for which offsite or exterior onsite improvements are incomplete. Escrow funds may only be used to complete the remaining improvements. This procedure makes it possible for loans to be guaranteed with adequate protection for the veteran and VA.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: March 21, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7656 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0362]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the amount owed to the holder when there is a default on a VA guaranteed home loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0362'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: a. Claim Under Loan Guaranty, VA Form 26–1874.

b. Supplemental Claim Form—Adjustable Rate Mortgages, VA Form 26–1874a.

OMB Control Number: 2900–0362.

Type of Review: Extension of a currently approved collection.

Abstract: a. Lenders and holders of VA guaranteed home loans use VA Form 26–1874 as notification to VA of default loans.

b. VA Form 26–1874a is used as an attachment to VA Form 26–1874 when filing a claim under the loan guaranty resulting from the termination of an Adjustable Rate Mortgage Loan. The information obtained on both forms is essential to VA in determining the amount owed to the holder under the guaranty.

Affected Public: Business or other for profit.

Estimated Annual Burden: 26,139 hours.

a. VA Form 26–1874—25,806 hours.

b. VA Form 26–1874a—333 hours.

Estimated Average Burden Per Respondent: 59 minutes (average).

a. VA Form 26–1874—60 minutes.
b. VA Form 26–1874a—20 minutes.
Frequency of Response: On occasion.
Estimated Number of Total Respondents: 26,806.
a. VA Form 26–1874—25,806.
b. VA Form 26–1874a—1,000.

Dated: March 20, 2002.
By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7658 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0324]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revison of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to make a decision on a veteran's claim for insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0324'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplement Physical Examination Reports.

a. Supplemental Physical Examination Report, VA Form 29–8146.
b. Attending Physician's Statement, VA Form 29–8158.
c. Supplemental Physical Examination Report (Diabetes—Physician's Report), VA Form 29–8160.

OMB Control Number: 2900–0324.

Type of Review: Revision of a currently approved collection.

Abstract: The forms are used to obtain complete information as to the physical and/or mental condition of a veteran who has submitted an application for Government Life Insurance or reinstatement of eligibility. The information is used to process the insured's request.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,080 hours.
a. VA Form 29–8146—220 hours.
b. VA Form 29–8158—1,000 hours.
c. VA Form 29–8160—220 hours.

Estimated Average Burden Per Respondent:
a. VA Form 29–8146—45 minutes.
b. VA Form 29–8158—45 minutes.
c. VA Form 29–8160—45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,440.
a. VA Form 29–8146—750.
b. VA Form 29–8158—165.
c. VA Form 29–8160—165.

Dated: March 20, 2002.
By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7659 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health 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 Health Administration (VHA), 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 April 29, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–NEW.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 at (202) 395–7316. Please refer to ''OMB Control No. 2900-NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: VA Multifamily Transitional Housing Loan Guaranty Application, VA Form 10–0365.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA is authorized to guarantee loans for construction or rehabilitation of multifamily transitional housing for homeless veterans. Loans may include amounts to acquire land, refinance existing loans, finance acquisition of furniture, equipment, supplies and materials and to supply working capital for the organization. The information collected is used to determine financial and program service provider eligibility and apply criteria to rate each application; and to obtain information necessary to ensure minimal defaults and delinquencies, interest subsidies, or other payments.

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 January 15, 2002, at page 2015.

Affected Public: Not-for-profit institutions and State, Local or Tribal Governments.

Estimated Annual Burden: 200 hours.

Estimated Average Burden Per Respondent: 40 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5.

Dated: March 20, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7657 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on April 11 and 12, 2002, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Room 230, Washington, DC 20420. On Thursday, April 11, the meeting will begin at 8:15 a.m. and end at 5:30 p.m. On Friday, April 12, the meeting will begin at 8:15 a.m. and adjourn at 4 p.m. The meeting will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War.

The meeting will begin with a discussion of the Committee's goals and work plan, led by the Chairman, Mr. Jim Binns Jr. The Committee will receive briefings on research initiatives affecting Gulf War veterans. Those briefings will focus on epidemiology, risk factors, the nature of the disease, treatments, research policies, and other related topics. The meeting will include opportunities to discuss the material presented in the briefings, and planning for the Committee's first annual report.

Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: March 22, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–7655 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–M

Notices

Federal Register
Vol. 67, No. 61
Friday, March 29, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to request an extension for a currently approved information collection in support of USDA's Biological Control Documentation Program dealing with documenting the importation and release of foreign biological control agents.

DATES: Comments on this notice must be received by June 3, 2002, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Jack R. Coulson, director, ARS Biological Control Documentation Center, National Program Staff, National Agricultural Library, ARS, USDA, 10301 Baltimore Avenue, Beltsville, MD 20705–2330.

FOR FURTHER INFORMATION CONTACT: Jack R. Coulson, Director, ARS Biological Control Documentation Center, (301) 504–6350.

SUPPLEMENTARY INFORMATION:

Title: USDA Biological Shipment Record—Beneficial Organisms: Foreign/Overseas Source (AD–941); Quarantine Facility (AD–942); and Non-Quarantine (AD–943).

OMB Number: 0518–0013.

Expiration Date of Approval: August 31, 2002.

Type of Request: To extend a currently approved information collection.

Abstract: The purpose of the Biological Control Documentation Program is to record the importation (AD–941), release from quarantine (AD–942), and shipment and/or field release/recolonization (AD–942 and AD–943) of foreign/introduced beneficial organisms (pollinators and biological control agents for invasive species). The information collected is entered into the USDA ''Releases of Beneficial Organisms in the United States and Territories'' (ROBO) database, established in 1984. It is a cooperative program among USDA and other federal agencies, state governmental agencies, and U.S. universities. The use of the forms and the information provided is voluntary. The program is for the benefit of biological control research and action agency personnel, taxonomists, federal and state regulatory agencies, agricultural administrators, and the general public. The AD–941 has been computerized and efforts are underway to replace the other paper forms with computerized information collection, and when completed, only those units for which computerized input is not possible would use the forms.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1/12 hour per response.

Non-Federal Respondents: Universities, and state and local governments.

Estimated Number of Non-Federal Respondents: 40.

Estimated Number of Responses per Respondent: An average of 3 (range 1–30).

Estimated Total Annual Burden on Respondents: 10 hours.

Copies of the 3 forms used in this information collection, and information on the computerized form can be obtained from Jack R. Coulson, ARS Biological Control Documentation Center, at (301) 504–6350.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Jack R. Coulson, Director, ARS Biological Control Documentation Center, National Program Staff, ARS, USDA, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD 20705–2350.

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

Dated: March 7, 2002.

Judy St John,

Associate Deputy Administrator, Plant Sciences, National Program Staff, Agricultural Research Service, Department of Agriculture.

[FR Doc. 02–7632 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency; Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) to request extension of the information collection currently approved for Form CCC–10, used in support of the CCC and FSA Farm Loan Programs (FLP). Form CCC–10 was approved for use by the Office of Management and Budget (OMB) on November 16, 2001, for a period of six months.

DATES: Comments on this notice must be received on or before May 28, 2002, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, USDA, Farm Service Agency, Price Support Division, 1400

Independence Avenue, SW., STOP 0512, Washington, DC 20250–0512; Telephone (202) 720–7935; Electronic mail: *chris—kyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Representations for Commodity Credit Corporation or Farm Service Agency Loans and Authorization to File a Financing Statement and Related Documents.

OMB Control Number: 0560–0215.

Expiration Date of Approval: March 31, 2002.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: CCC–10 is necessary to: (a) gather or verify basic data regarding the CCC or FSA loan applicant required on a financing statement that is filed to perfect a security interest in collateral used to secure a loan; and (b) obtain their permission to file a financing statement prior to the execution of a security agreement.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Individual farmers, farm or other business entities.

Estimated Number of Respondents: 207,500.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden On Respondents: 120,350 hours.

Comments are invited on the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Chris Kyer, Program Specialist, USDA, Farm Service Agency, Price Support Division, 1400 Independence Avenue, SW., STOP 0512, Washington, DC 20250–0512.

Comments will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on March 8, 2002.

James R. Little,

Executive Vice President, CCC and Administrator, Farm Service Agency.

[FR Doc. 02–7630 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection from the U.S. population. The study will collect data from two panels of consumers on their willingness to pay for reductions in the risk of foodborne illness using alternative risk reduction technologies.

DATES: Comments on this notice must be received by June 3, 2002, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Katherine Ralston, Diet, Safety, and Health Economics Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St. NW., Washington, DC 20036–5831. Submit electronic comments to *kralston@ers.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Katherine Ralston, 202–694–5463.

SUPPLEMENTARY INFORMATION:

Title: Estimating Consumer Benefits of Improving Food Safety.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for the collection of survey data from two panels of food product consumers.

Abstract: The U.S. Department of Agriculture (USDA) has responsibility to ensure that meat and poultry products are safe for human consumption. The Economic Research Service (ERS), as the lead economic research arm of the Department, has responsibility to conduct economic research on the social benefits of policies and programs designed to reduce and prevent illnesses caused by microbial pathogens.

ERS has estimated the costs of medical treatment and lost productivity, and premature death from diseases caused by five microbial pathogens at $6.9 billion annually. These costs almost certainly understate the true social costs of these illnesses since they do not measure the consumer's willingness to pay to prevent foodborne disease. Research is needed to (1) determine the extent to which a willingness to pay approach would boost assessments of the economic value of reductions in foodborne illnesses, and (2) to identify factors that influence consumers' valuation of these reductions, including personal and household characteristics, and information the consumer receives about foodborne illness.

To date, most food-related risk valuation studies indicated that consumers would pay modest amounts in excess of the products' purchase price to decrease low-level food risks. These food safety studies observed that, contrary to theoretical expectation, the average value of risk reduction did not vary with the magnitude of risk reduction, regardless of elicitation method and type of risk. Several reasons could have caused this phenomenon. People have difficulties handling risk decisions, and some do not or cannot tell one magnitude of risk reduction from another. People also may hold a subjective threshold level of the baseline risk below which the different magnitudes of risk reduction are irrelevant. People also tend to focus their generic concern for safer food on safety levels rather than differences in the level of risk, and therefore any improvement toward complete safety is acceptable and the level of improvement does not matter. Some subjects place more weight on their risk perception than on the risk information provided during the experiment, and others simply do not pay close attention to the evaluation task when asked to reveal their willingness to pay for risk reduction.

There are two reasons why the current studies offer limited information. First, the range of alternative risk reduction strategies has been rather restrictive, limited either to a private action or a collective investment, not both. Second, with the exception of Fox et al. (JA Fox, JF Shogren, DJ Hayes, JB Kliebenstein 1998. ''CVM–X: Calibrating Contingent Values with Experimental Auction Markets,'' *American Journal of Agricultural Economics* 80(3):455–465) there has not been a direct comparison

of the elicitation methods for food safety values. Fox et al. explored hypothetical-survey and actual-experimental-auction preferences for irradiated pork. Incorporating a broader set of risk reduction strategies and a direct comparison of elicitation devices will provide more understanding about the nature of expressed values, and will strengthen the validity and usefulness of evaluation results. In addition to providing refinements in valuation techniques so that empirical results are consistent with economic theory, better understanding of what the expressed values mean is an important step toward incorporating subjective value measures into policy decisions.

This pilot study will estimate consumers' willingness to pay to reduce the risk of foodborne illness using two different methods, namely contingent valuation methods and recently developed market-based methods. Two surveys will be administered to panels of consumers through the Internet. One survey (Part A) is a contingent valuation survey focusing on responses to different information about foodborne illness risk levels, severity, duration, and mortality rates. The second survey (Part B) uses a market-based method, measuring how consumers change food intake in response to risk information. The changes in consumption patterns and food expenditures of consumers receiving risk information will be used to derive the willingness to pay for reductions in foodborne illness risk.

The contingent valuation survey will be administered to a panel of food product consumers who have already been recruited to participate in multiple surveys by a private computer research firm. The survey for Part B will be administered similarly, but the computer research firm administering the survey is developing panels and will advertise over the Internet for additional participants. The panel members recruited to complete the Part A survey will receive free Internet service and monetary compensation for their efforts. The panel members recruited to complete the Part B survey will receive monetary compensation.

Administering the surveys through the Internet will reduce the burden on respondents because the survey questions can be answered more quickly by computer than over the phone or in person, and because respondents can complete the surveys at a time convenient to them. For Part A, household and personal characteristics of the participants are already available and will not have to be obtained from the survey. For Part B, the panels will be chosen to match the U.S. Census totals for cells stratified by age, gender, ethnicity, region, education, and income.

Part A: The contingent valuation survey will present a panel of consumers with information about the risk of foodborne illness associated with chicken, ground beef, and lettuce. Respondents will be asked how much they would be willing to pay for a food guaranteed to have a lower risk of contamination, where the reduction in risk is specified numerically and graphically. The panel will also receive information about the potential severity and duration of an illness if it were to occur. The results will provide estimates of the value of reductions in selected foodborne risks, spanning a range of symptom severity (including mortality) and symptom duration.

Part B: The general survey design will consist of three sections. Section 1 will elicit a person's knowledge of food safety, risk perceptions of the food-borne pathogens, awareness of alternative risk reduction technologies (*e.g.*, HACCP, irradiation, safe food handling labels, home preparation practices), and socio-demographics. The survey will ask subjects to reveal their ordinal preferences for food safety and risk reduction technologies. Section 2 will ask consumers to report all foods eaten in the past 24 hours. Section 3 will provide the individual with a scientifically neutral description of the food-borne pathogens and the alternative risk reduction technologies. Then the individual will be asked to reveal his or her updated risk perceptions and his or her ordinal preferences for the alternative risk reduction technologies. Respondents will complete sections 2 and 3 once a week over a period of four weeks. During each round, they will be presented with information about the risks of infection from a different pathogen from a different food, which may then influence changes in food intake during the following round. The observed changes will be used to derive the ex ante willingness to pay for food safety improvements.

The results of both surveys will provide information on the sensitivity of willingness to pay to alternative information about risk levels, severity of illness, and duration as well as alternative risk reduction technologies. Those estimates can be used in comparing the benefits and costs of specific policies and regulations to improve food safety. In addition, the study will provide improved methods for estimating values of reductions in risk, which can be used to estimate the values of other reductions in risk.

Estimate of Burden: The reporting burden on each respondent completing the Part A survey is estimated to be 30 minutes, based on a trial administered to several test subjects. The burden to each respondent completing Part B is estimated to be 30 minutes per week for four weeks, or 2 hours total per respondent.

Respondents: The panel completing Part A is composed of consumers who have already been recruited by a private market research firm to participate in several surveys through the Internet. Household members primarily responsible for food shopping and preparation compose the panel for Part B.

Estimated Number of Respondents: The study design for Part A calls for each respondent to be presented with information about each food, including one of two possible risk of illness levels, and one of three possible levels of illness duration, severity, and mortality risk. A total of 800 respondents are needed for each level; the total number of respondents is then 800 times the largest number of levels for any variable, namely three. Thus, the total number of respondents needed is 2400.

The sample size for Part B is 500. The ability to investigate the heterogeneity of consumer risk preferences is greatly enhanced the more the sampling is repeated (repeating parts 2 and 3 with additional information about pathogens and risk reduction technologies), thus reducing pooling made necessary by the sample size. Initial exploration of the survey design suggested that four was about as many repeat samplings that most potential respondents would view as reasonable.

Estimated Total Burden on Respondents: 2200 hours [Part A—1200 hours (30 minutes per survey × 2400 respondents) plus Part B—1000 hours (500 respondents × 2 hours burden per respondent).

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address

stated in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Dated: March 4, 2002.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. 02–7631 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Long Damon Plantation Release and Site Preparation Project, Modoc County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, Modoc National Forest, Devil's Garden and Big Valley Ranger Districts will prepare an environmental impact statement (EIS) to disclose the environmental consequences of the proposed Long Damon Plantation Release and Site Preparation Project, and alternatives to the proposal. The decision to be made, is whether to select this proposed action or one of the alternatives to this proposal. The Long Damon Plantation Release and Site Preparation Project area is located approximately 18 miles northwest of Canby, CA, in Modoc County, CA, within the 23,400 acre Damon Wildfire that burned in 1996.

The Forest Service proposes to treat competing vegetation on up to 4,700 acres that have been, or will be, planted with native conifer seedlings. The proposal protects a large public investment in post-fire reforestation, accelerates development of the desired resource conditions described for this area in the Modoc National Forest Land and Resource Management Plan (MLRMP), as amended by the Sierra Nevada Forest Plan Amendment Record of Decision—Jan 2001 (SNROD), and implements Standards and Guidelines described by MLRMP as amended by SNROD. The areas where actions are proposed are identified as General Forest, Inventoried Roadless and Wildland Urban Interface areas in the SNROD. Vegetation treatments proposed in plantations within these land allocations are designed to accelerate development of old forest characteristics, increase the distribution and connectivity of forests across the landscape, increase stand heterogeneity, and reduce the risk of wildfire loss. Projects within Inventoried Roadless and Wildland Urban Interface land allocations are designed to move areas towards conditions that allow for efficient and safe suppression of wildland fire. The proposed action is also consistent with the objectives of the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976: It is the policy of the Congress that all forested lands in the National Forests shall be maintained in appropriate forest cover with species of trees, degrees of stocking, rate of growth and conditions of stand, designed to secure maximum benefits of multiple use sustained yield management in accordance with land management plans.

The Forest Service proposes to aerially apply Pronone 10G, a granular formulation of the herbicide hexazinone to control competing vegetation in post-fire plantations where successful seedling establishment is threatened. Aerial application by helicopter is the preferred method of treatment due to cost efficiency, speed and accuracy of application, and low worker exposure. The objective of this treatment is to reduce competing vegetation levels below twenty percent total ground cover for a period of two to three years after planting. Reforestation success is more readily achieved when competing vegetation is managed to produce a favorable environment for survival and growth of conifer seedlings. Control of the environment in these plantations is critical to ensure survival and growth of native conifer seedlings in sufficient quantity and quality to meet the long-term objective of increased distribution and connectivity of large trees across the landscape. Without adequate stocking of vigorously growing, well-distributed seedlings, these plantations will lack the resiliency over time to meet these long-term objectives.

Important preliminary considerations identified to date are: (1) Worker safety/public safety, including Native American plant uses and collections; (2) Direct and indirect effects to wildlife and (3) Effects to a Forest Service listed sensitive plant, Iliamna bakeri.

In addition to the proposed action and the no action alternative, other possible alternatives include no treatment in specific plantations or portions of plantations with high densities if Iliamna bakeri where these sub-populations could serve as a seed source for the surrounding area. The alternatives to this proposal will include a no-action alternative.

DATES: Comments identifying issues concerning the effects of the proposal should be postmarked on or before April 29, 2002 to receive timely consideration in the draft EIS.

ADDRESSES: Submit written comments to: Anne Mileck, Team Leader, USDA Forest Service, 800 West 12th St. Alturas, CA 96101. Send electronic comments to: *amileck@fs.fed.us.* Please reference the Long Damon Plantation Release and Site Preparation Project on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you. Comments received, including names and addresses of those who comment, will become part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality.

FOR FURTHER INFORMATION CONTACT: Anne Mileck, Team Leader, at 530–233–8803 or Bernie Weisgerber, District Ranger, Doublehead Ranger District, at 530–667–2246.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed land management activities. The information presented in this notice is summarized. Those who wish to provide comments, or are otherwise interested in the project, are encouraged to obtain additional information from the contact identified in the **FOR FURTHER INFORMATION CONTACT** section.

Public Involvement

Additional information concerning the proposal can be accessed on the Internet at *http://www.r5.fs.fed.us/modoc/management/nepa/nepa.html.*

Process Procedures and Timelines

The Long Damon Plantation Release and Site Preparation Project has been listed in the Modoc National Forest's Calendar of Proposed Environmental Actions since January 1999. Public scoping for an Environmental Assessment began in the fall of 1999. In January 2000 the Forest sent a scoping letter describing the proposed action to 39 government agencies, public individuals and groups, including private landowners adjacent to the proposed treatment areas and to others who had been identified as potentially interested in the proposed vegetation management program. Consultation with local Native American tribal

representatives started in January of 2000 and has been ongoing. The Forest has conducted three field trips to the project area for the public and local Native American tribal representatives.

All comments received from the earlier scoping period will be considered in the EIS, unless respondent submits new comments indicating changes to prior submissions.

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review by May 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519 553 (1978)). Also, environmental objection that could be raised at the draft environmental impact statement state but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F. 2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)).

Because of the above rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. After the comment period ends on the draft EIS, the comments received will be analyzed and considered by the Forest Service in preparing the final EIS.

The final EIS is scheduled to be completed in September, 2002. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision.

That decision will be subject to appeal under 36 CFR part 215.

The responsible official is Dan Chisholm, Forest Supervisor, Modoc National Forest, 800 W. 12th St., Alturas, CA 96101.

Dated: March 18, 2002.

Dan Chisholm,

Forest Supervisor.

[FR Doc. 02–7183 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Monday, April 8, 2002 at the Skamania County Public Works Department basement located in the Courthouse Annex, 170 N.W. Vancouver Avenue, Stevenson, Washington. The meeting will begin at 1 p.m. and continue until 4 p.m. The purpose of the meeting is to:

(1) Complete the recommendation for funding of Title II projects for fiscal year 2002 from the March 15 meeting.

(2) Provide for a Public Open Forum.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (2) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Tom Knappenberger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: March 25, 2002.

Lynn Burditt,

Deputy Forest Supervisor.

[FR Doc. 02–7575 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Idaho

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: It is the intention of the NRCS in Idaho to issue revised conservation practice standard: Agrichemical Mixing Facility (702), Alley Cropping (311), Composting Facility (317), Conservation Cover (327), Conservation Crop Rotation (328), Contour Farming (330), Contour Stripcropping (585), Cover Crop (340), Deep Tillage (324), Fish Passage (396), Grassed Waterway (412), Grazing Land Mechanical Treatment (548), Irrigation Water Conveyance, Ditch and Canal Lining Nonreinforced Concrete (428A), Irrigation Water Management (449), Land Smoothing (466), Nutrient Management (590), Pest Management (595), Pipeline (516), Prescribed Burning (338), Pumping Plant for Water Control (533), Residue Management, Mulch Till (329B), Riparian Forest Buffer (391), Spoil Spreading (572), Spring Development (574), Stream Habitat Improvement and Management (395), Surface Roughening (609), Underground Outlet (620), Use Exclusion (472), and Windbreak/Shelterbelt Establishment (380).

DATES: Comments will be received for a 30-day period commending with this date of publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Richard W. Sims, State Conservationist, Natural Resources Conservation Service (NRCS), 9173 W. Barnes Dr., Suite C, Boise, Idaho 83709. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. The next 30 days the NRCS in Idaho will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Idaho regarding disposition of those comments and a final determination of change will be made.

Dated: March 15, 2002.

Richard W. Sims,

State Conservationist, USDA, Natural Resources Conservation Service, Boise, Idaho 83709.

[FR Doc. 02–7555 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #386, Field Border and #380, Windbreak/Shelterbelt Establishment to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: March 18, 2002.

L. Willis Miller,

Assistant State Conservationist for Programs, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 02–7554 Filed 3–28–02; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

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

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: April 29, 2002.

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

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions:

On November 9 and November 23, 2001, January 11, February 1, February 8 and February 15, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (66 FR 56635 and 58712, 67 FR 1436, 4944, 5965 and 7130) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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

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

2. The action will not have a severe economic impact on current contractors for the products and services.

3. The action will result in authorizing small entities to furnish the products and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Labels, Laser/7530–00–NIB–0527.

Product/NSN: Labels, Laser/7530–00–NIB–0528.

Product/NSN: Labels, Laser/7530–00–NIB–0530.

Product/NSN: Labels, Laser/7530–00–NIB–0531.

Product/NSN: Labels, Laser/7530–00–NIB–0532.

Product/NSN: Labels, Laser/7530–00–NIB–0533.

Product/NSN: Labels, Laser/7530–00–NIB–0534.

Product/NSN: Labels, Laser/7530–00–NIB–0535.

Product/NSN: Labels, Laser/7530–00–NIB–0536.

Product/NSN: Labels, Laser/7530–00–NIB–0582.

Product/NSN: Labels, Laser/7530–00–NIB–0648.

Product/NSN: Labels, Laser/7530–00–NIB–0649.

NPA: North Central Sight Services, Inc., Williamsport, PA.

Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.

Services

Service Type/Location: Administrative Support Services/GSA PBS Atlanta PMC, Atlanta, GA.
NPA: Blind & Low Vision Services of North Georgia, Smyrna, GA.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Distribution of Licensed Products for the G.R.E.AT Department of the Treasury, Bureau of ATF, Washington, DC (25% of Total Government Requirement).
NPA: Industries for the Blind, Inc., Milwaukee, WI.
Contract Activity: Department of the Treasury, Bureau of ATF.
Service Type/Location: Eyewear Prescription Service/Department of Veterans Affairs Veteran Integrated Services Network 7, (Alabama, Georgia and South Carolina).
NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.
Contract Activity: Department of Veterans Affairs.
Service Type/Location: Janitorial/Custodial/Defense Commissary Agency Western Pacific Region, McClellan, CA.
NPA: PRIDE Industries, Roseville, CA.
Contract Activity: Defense Commissary Agency, Fort Lee, VA.
Service Type/Location: Janitorial/Custodial/Naval and Marine Corps Reserve Center, Boise, ID.
NPA: Western Idaho Training Company, Inc., Caldwell, ID.
Contract Activity: Naval Facilities Engineering Command—Everett, Everett, WA.
Service Type/Location: Janitorial/Custodial/Naval and Marine Corps Reserve Center, Eugene, OR.
NPA: Pearl Buck Center Incorporated, Eugene, OR.
Contract Activity: Naval Facilities Engineering Command—Everett, Everett, WA.
Service Type/Location: Janitorial/Custodial/Veterans Affairs Outpatient Clinic, Greenville, SC.
NPA: Greenville Rehabilitation Center, Greenville, SC.
Contract Activity: Department of Veterans Affairs.
Service Type/Location: Janitorial/Custodial/Border Patrol Air Operations Facility, (Marfa Airport), Marfa, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Anti-Smuggling Unit Office, Marfa, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Alpine, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Fort Stockton, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Marfa, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Pecos, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Presidio, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Sanderson, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Sierra Blanca, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Station, Van Horn, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Traffic Checkpoint, Alpine, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Traffic Checkpoint, Marathon, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Traffic Checkpoint, Marfa, TX.
Service Type/Location: Janitorial/Custodial/Border Patrol Traffic Checkpoint, Sierra Blanca, TX.
NPA: Professional Contract Services, Inc., Austin, TX.
Contract Activity: Immigration and Naturalization Service, DOJ.
Service Type/Location: Mailroom Operation/Internal Revenue Service-US Mint Headquarters, Washington, DC.
NPA: ServiceSource, Inc., Alexandria, VA.
Contract Activity: Internal Revenue Services.
Service Type/Location: Maintenance and Repair of Portable Light Towers/Basewide, Fort Hood, TX.
NPA: Professional Contract Services, Inc., Austin, TX.
Contract Activity: Army III Corps and Ft. Hood Contracting CMD, Ft. Hood, TX.

Deletions

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

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the products.

3. The action may result in authorizing small entities to furnish the products to Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46048 and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Squeegee, Floor-Cleaning/7920–00–224–8339.
Product/NSN: Squeegee, Floor-Cleaning/7920–00–530–5740.
Product/NSN: Squeegee, Floor-Cleaning/7920–00–965–4873.
NPA: There is currently no nonprofit agency authorized to provide these products.
Contract Activity: GSA, General Products Commodity Center, Fort Worth, TX.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 02–7640 Filed 3–28–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

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

ACTION: Proposed additions to Procurement List.

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

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 29, 2002.

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

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

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

If the Committee approves the proposed additions, the entities of the

Federal Government identified in the notice for each product or service will be required to procure the products and 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 products and services to the Government.

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

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the products and 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 products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0060.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on/6530–00–NIB–0061.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00–NIB–0062.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00–NIB–0063.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00–NIB–0064.
Product/NSN: Catheter, External, Male, Self-Adhering, Pop-on /6530–00–NIB–0065.
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0066.
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0067.
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0068.
Product/NSN: Catheter, External, Male, Self-Adhering, Wide-band/6530–00–NIB–0069.
NPA: Lighthouse for the Blind, St. Louis, MO.
Contract Activity: Department of Veterans Affairs Acquisition Center, Hines, IL.
Product/NSN: Floor Stripper LO/7930–00–NIB–0124.
Product/NSN: 3–1 Floor Cleaner/7930–00–NIB–0216.
Product/NSN: Quat Disinfectant Cleaner/7930–00–NIB–0267.
Product/NSN: Heavy Duty Aircraft Cleaner/7930–01–381–5794.
Product/NSN: Bathroom Cleaner/7930–01–381–5820.
Product/NSN: Glass Cleaner/7930–01–381–5826.
Product/NSN: General Purpose Cleaner/7930–01–381–5834.
Product/NSN: Neutral Cleaner/7930–01–381–5897.
Product/NSN: Food Service Degreaser/7930–01–381–5936.
Product/NSN: Heavy Duty Multi Surface Cleaner/7930–01–381–5997.
Product/NSN: Fresh Scent Deodorizer/7930–01–412–1033.
Product/NSN: Mountain Space Deodorizer/7930–01–412–1034.
Product/NSN: Sanitizer Cleaner/7930–01–412–1036.
Product/NSN: Phenolic Disinfectant/7930–01–436–7950.
Product/NSN: Non Acid Bathroom Cleaner/7930–01–436–8083.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.
Product/NSN: Kit, Employee Start, Up/7520–01–493–6006.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.
Product/NSN: Sunscreen Preparation, Gel or Lotion/6505–01–121–2336.
NPA: ACT CORP., Daytona Beach, FL.
Contract Activity: Defense Supply Center—Philadelphia, Philadelphia, PA.

Services

Service Type/Location: Grounds Maintenance/NASA Goddard Space Flight Center, Greenbelt, MD.
NPA: Melwood Horticultural Training Center, Upper Marlboro, MD.
Contract Activity: NASA—Goddard Space Flight Center.
Service Type/Location: Janitorial/Grounds and Related Services/Federal Building, Tucson, AZ.
Service Type/Location: Janitorial/Grounds and Related Services/Motor Pool Office and Garage, Tucson, AZ.
Service Type/Location: Janitorial/Grounds and Related Services/US Border Patrol Sector HQ, Tucson, AZ.
NPA: Tetra Corporation, Tucson, AZ.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Switchboard Operation/Veterans Affairs Medical Center, Iowa City, IA.
NPA: Goodwill Industries of Southeast Iowa, Iowa City, IA.
Contract Activity: Veterans Affairs Medical Center, Iowa City, IA.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 02–7641 Filed 3–28–02; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on April 16, 2002, at the Adam's Mark, 64 S. Water Street, Mobile, Alabama 36602. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 25, 2002.

Ivy L. Davis,
Chief, Regional Programs Coordination Unit.

[FR Doc. 02–7548 Filed 3–28–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on April 25, 2002, at the South Carolina Human Affairs Commission, 2611 Forest Drive, Suite

200, Columbia, South Carolina 29240. The purpose of the meeting is to conduct new member orientation, to hear from the chairperson of the South Carolina Black Legislative Caucus and other speakers regarding Title VI, the United States Housing and Urban Development's Hope VI Project and other civil rights enforcement efforts in South Carolina.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–7550 Filed 3–28–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the Washington Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on April 24, 2002, at the Westin Seattle, 1900 Fifth Avenue, Seattle, Washington 98101. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 25, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–7549 Filed 3–28–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Field Representative Exit Questionnaire.

Form Number(s): BC–1294, BC–1294(D).

Agency Approval Number: 0607–0404.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 59 hours.

Number of Respondents: 500.

Avg Hours Per Response: BC–1294–7 minutes; BC–1294(D)–10 minutes.

Needs and Uses: Field interviewers are the foundation of Census Bureau data collection programs. Retention of trained field interviewing staff is a major concern for the Census Bureau because of both the monetary costs associated with employee turnover, as well as the potential impact on data quality. High turnover among interviewers can result in a reduction in the quality of data collected as well as increases in the cost of collecting data. In a continuous effort to devise policies and practices aimed at reducing turnover among interviewers, the Census Bureau collects data on the reasons interviewers leave the Census Bureau. The exit questionnaires (Forms BC–1294 and BC–1294(D)) are used to collect data from a sample of former current survey interviewers (field representatives) and decennial census interviewers (enumerators).

The purpose of the exit questionnaires is to determine the reasons for interviewer turnover and what the Census Bureau might have done or can do to influence them not to leave. As the demographics of our labor force, the nature of the surveys conducted, and the environment in which surveys take place continue to change, it is important that we continue to examine the interviewers' concerns. Information provided by respondents to the exit questionnaire provides insight on the measures the Census Bureau might take to decrease turnover and is useful in helping to determine if the reasons for interviewer turnover appear to be systemic or localized. The exit questionnaires seek reasons interviewers quit, inquires about motivational factors that would have kept the interviewers from leaving, identify training program strengths and weaknesses as they impact on the decision to quit, identify supervisory style strengths and weaknesses as they impact on the decision to leave, and identify the impact of pay and other working conditions on the interviewer's decision to leave the job. The exit questionnaires have been shown to be useful and we want to continue their use.

Both exit questionnaires have been revised since the last request for clearance to improve clarity in the wording of some questions. Some answer categories that are no longer germane have been deleted or replaced. Some questions have been removed. Changes to the exit questionnaires were made based on lessons learned and feedback on the current forms.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: 5 U.S.C. 3101; 13 U.S.C., 23.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 26, 2002.

Madeleine Clayton,

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

[FR Doc. 02–7543 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Institutional Remittances to Foreign Countries—BE–40

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 proposed and/or continuing information collections; as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 28, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Michael Mann, Chief, Current Account Services Branch, Room 8018, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9573; and fax: (202) 606–5314.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Economic Analysis is responsible for the computation and publication of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the ''private remittances'' portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business,* are one of the major statistical products of BEA. The accounts provide a statistic summary of U.S. international transactions. They are used by government and private organizations for national and international policy formulation, and analytical studies. Without the information collected in this survey, an integral component of the private remittances account would be omitted. No other Government agency collects comprehensive annual data on private unilateral transfers of funds to foreign countries.

The survey requests information from U.S. religious, charitable, educational, scientific, and similar organizations on the transfer of cash grants to foreign countries and their expenditures in foreign countries. Information is collected on a quarterly basis from institutions transferring $1 million or more each year, and annually for all others. Nonprofit organizations with total remittance of less than $25,000 annually are exempt from reporting.

II. Method of Collection

Information is obtained from U.S. religious, charitable, educational, scientific, and similar organizations who voluntarily agree to provide data regarding transfers of cash grants to foreign countries and their expenditures in foreign countries. Submission of the completed report form, or computer printouts in the format of the report form, are the most expedient and economical methods of reporting the information. In accordance with the Paperwork Reduction Act of 1995, BEA is implementing the ASTAR system which allows organizations to file electronically via the Internet.

III. Data

OMB Number: 0608–0002.

Form Number: BE–40.

Type of Review: Renewal—regular submission.

Affected Public: U.S. religious, charitable, educational, scientific, and similar organizations which transfer cash grants to foreign countries and their expenditures in foreign countries.

Estimated Number of Respondents: 1,336.

Estimated Time Per Response: 1.5 hours per annual reporter. 6.0 hours per quarterly reporter.

Estimated Total Annual Burden Hours: 3,273 hours.

Estimated Total Annual Cost: The estimated annual cost to the government is $17,600. The estimated annual cost to the public is $98,190 based on total number of hours estimated as the reporting burden and as estimated hourly cost of $30.

Respondent's Obligation: Voluntary.

Legal Authority: Bretton Woods Agreement Act, Section 8, and E.O. 10033, as amended.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or 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 the information collection; they also will become a matter of public record.

Dated: March 26, 2002.

Madeleine Clayton,

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

[FR Doc. 02–7542 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Bulk Aspirin from the People's Republic of China; Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review.

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

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China (''PRC''). The period of review is July 6, 2000 through June 30, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

DATES: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Cole Kyle in Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; at telephone (202) 482–4207 and 482–1503, respectively.≤

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act and all citations to the regulations are to 19 CFR Part 351 (2001).

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day

of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On August 20, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on bulk aspirin from the PRC, covering the period July 6, 2000 through June 30, 2001 (66 FR 43570). The preliminary results for the antidumping duty administrative review of bulk aspirin from the PRC are currently due no later than April 2, 2002.

Extension of Time Limits for Preliminary Results

In order to consider various issues (e.g., factor values, changed circumstances review request) raised by the interested parties in this review, it is not practicable to complete this review within the originally anticipated time limit (i.e., by April 2, 2002). Therefore, the Department of Commerce is extending the time limit for completion of the preliminary results to no later than July 31, 2002, in accordance with section 751(a)(3)(A) of the Act.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 25, 2002

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 02–7654 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils From Germany: Amended Final Determination of Antidumping Duty Investigation

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

ACTION: Notice of Amended Final Determination of Antidumping Duty Investigation.

EFFECTIVE DATE: December 28, 2001.

SUMMARY: On July 27, 1999, the Department of Commerce (the Department) published an amended final determination of its antidumping duty investigation of stainless steel sheet and strip in coils from Germany. See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 40557 (July 27, 1999). Parties to the proceedings subsequently challenged certain aspects of our final determination before the United States Court of International Trade (the Court). This litigation resulted in two remand orders by the Court, to which the Department timely responded.

On October 19, 2001, the Court affirmed the redetermination made by the Department pursuant to the Court's second remand of the final determination of sales at less than fair value of stainless steel sheet and strip in coils from Germany. See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States, Court No. 99–08–0050, Slip Op. 01–123 (CIT October 19, 2001). As there is now a final and conclusive court decision with respect to litigation for Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States, Court No. 99–08–0050, we are hereby amending our final determination of sales at less than fair value and will instruct U.S. Customs of the resultant changes in the relevant cash deposit instructions.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James at (202) 482–1121, or (202) 482–0649, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Below is a summary of the litigation for the April 1, 1997 through March 31, 1998 final determination for which the Court has issued final and conclusive decisions.

On July 27, 1999, the Department published in the *Federal Register* a notice of amended final determination of sales at less than fair value and antidumping duty order on stainless steel sheet and strip in coils from Germany. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 40557 (July 27, 1999) (*Amended Final Determination*).

Following publication of the amended final determination, Krupp Thyssen Nirosta GmbH (KTN) and Krupp Hoesch Steel Products, Inc. (KHSP) filed a lawsuit with the Court challenging certain aspects of the Department's findings in the antidumping investigation of stainless steel sheet and strip in coils from Germany.

On July 31, 2000, the Court remanded eight issues from the *Amended Final Determination*, ordering the Department to either alter its approach or to provide additional explanation or adduce substantial evidence that its original approach was in accordance with law and otherwise supported by substantial evidence. *See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States*, Court No. 99–08–0050, Slip Op. 00–89 (CIT 2000) (Krupp I).

On October 30, 2000 the Department issued its *Results of Redetermination Pursuant to Court Remand Stainless Steel Sheet and Strip in Coils from Germany* (*Remand Determination I*) addressing the concerns of the Court as stated in *Krupp I*.

On July 9, 2001 the Court issued a second order remanding the Department's *Remand Determination I*. In *Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States*, Court No. 99–08–0050, Slip Op. 01–84 (CIT 2001) (*Krupp II*), the Court sustained our first redetermination as to facts available for certain downstream sales, our rejection of an affiliated U.S. reseller's database, and our application of facts available with respect to allocating sales of unidentified origin. *See Krupp II*. However, the Court directed the Department: i) to use facts available for the purpose of calculating U.S. Reseller's margin rate and any other calculation predicated on U.S. Reseller's cost and sales data; and, ii) to calculate facts available for the reseller in a way that uses sales prices net of movement and selling expenses.

On September 7, 2001 the Department issued its Draft Results of Redetermination to the plaintiffs and defendant-intervenors to comment. Neither party submitted comments on the Department's Draft Results of Redetermination. Pursuant to *Krupp II* the Department filed its redetermination on remand on September 14, 2001. The Department's Results of Redetermination were identical to the Draft Results of Redetermination.

On October 19, 2001, the Court affirmed the Department's remand

determination. *See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc. v. United States*, Court No. 99–08–0050, Slip Op. 01–123 (CIT October 19, 2001). The period to appeal has expired and no appeal was filed. Therefore, there is now a final and conclusive court decision with respect to the final determination of sales at less than fair value, and we are amending our final determination of the antidumping duty investigation for KTN based on our recalculation of KTN's rates pursuant to the remand. The amended final determination margin for KTN is 13.48 percent. As a result of these changes, the ''All Others'' rate also changes to 13.48 percent. We will instruct the U.S. Customs to change the relevant cash deposit instructions, effective December 28, 2001.[1]

Amendment to Final Determination

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), we are now amending the final determination of the sales at less than fair value investigation. The amended weighted-average margins are:

Exporter/ Manufacturer	Weighted-Average Margin (percent)
Krupp Thyssen Nirosta GmbH	13.48
All Others	13.48

We will instruct U.S. Customs to change the existing ''All Others'' cash deposit requirements accordingly, effective December 28, 2001. We note that KTN's current cash deposit rate is based upon an administrative review conducted subsequent to this segment of the proceeding. Therefore, this amended final determination does not affect the cash deposit rate for KTN.

Dated: March 20, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–7653 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] On February 20, 2002, the Department published the final results of the 1999 - 2000 administrative review of this order, establishing a new cash deposit rate of 2.61 percent for KTN. As a result, our cash deposit instructions for this amended final will serve only to correct the ''All Others'' rate.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121200A]

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Donation Program

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

ACTION: Announcement of approval of data collection.

SUMMARY: NMFS is announcing the approval of an information collection requirement for the Prohibited Species Donation Program.

DATES: Effective March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: The information collection requirement for § 679.26, including a revision to paragraph 679.26(c)(3) which was contained in the final rule to amend regulations implementing recordkeeping and reporting requirements for the groundfish fisheries of the exclusive economic zone off Alaska (67 FR 4100, January 28, 2002), was approved by the Office of Management and Budget (OMB) on March 11, 2002, in the renewal of OMB control number 0648–0316.

Dated: March 22, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–7709 Filed 3–28–02; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its new Volunteer Service Hour Tracking Tool. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by May 28, 2002.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. Christine Benero, Director, Public Affairs and Public Liaison, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Christine Benero, (202) 606–5000, ext. 193, or at *CBenero@cns.gov.*

SUPPLEMENTARY INFORMATION:

Record of Service

I. Background

In his State of the Union address, President Bush called on all Americans to perform some form of service to the nation for the equivalent of two years of his or her life. Americans serve their country in extraordinary and countless ways. Most of our Nation 's civic work is being done without the aid of the Federal Government, but we believe the Federal Government can work to enhance the opportunities for Americans to serve their neighbors and their Nation. The Administration proposes to create and expand activities that will enhance homeland security, provide additional community-based service and volunteer opportunities, and assist people around the world. In January, the President announced the creation of the USA Freedom Corps which will have three major components: a newly created Citizen Corps to engage citizens in homeland security; an improved and enhanced AmeriCorps and Senior Corps, programs of the Corporation for National and Community Service (Corporation); and a strengthened Peace Corps.

In support of the President's call to service, the Corporation has created an electronic record of service that provides citizens who accept his challenge a way to track their service time and record their service hours Use of this tracking tool is 100 percent electronic in that users will establish a user ID and password that automatically creates a ''record of service'' account which is only accessible to that particular user. This record of service account can be updated only by the user who established the account. In addition, those users who create a record of service account can, by checking various blocks, elect to receive information about USA Freedom Corps and other national and community service volunteer activities.

II. Current Action

Because of President Bush's announcement on March 12, 2002, which informed the public of the availability of this record of service, the Corporation, on March 6, 2002, submitted a request for emergency processing and approval by OMB of this record of service because it could not reasonably comply with the normal clearance procedures under the Paperwork Reduction Act. OMB approved this request on March 12, 2002, for a period of six months to expire on September 30, 2002, and assigned Control Number 3045–0077 to this information collection activity. The link to this record of service, which is now available for use, and which serves as a means for the public to record their record of service may be found on the following Internet address: *http://www.usafreedomcorps.gov.*

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Volunteer Service Hour Tracking Tool.

OMB Number: 3045–0077.

Agency Number: None.

Affected Public: Citizens of the United States.

Total Respondents: 10,000.

Frequency: On occasion.

Average Time Per Response: 3 minutes.

Estimated Total Burden Hours: 500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 22, 2002.

Christine Benero,

Director, Public Affairs and Public Liaison.

[FR Doc. 02–7443 Filed 3–28–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–14]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPAT/RM. (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–14 with attached transmittal and policy justification.

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 MAR 2002
In reply refer to:
I-02/000978

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-14 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Spain for defense articles and services estimated to cost $19 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments
Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-14

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Spain

(ii) **Total Estimated Value**:

Major Defense Equipment*	$15 million
Other	$ 4 million
TOTAL	$19 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: Thirty-one AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), eight Captive Air Training Missiles, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, publications and technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support

(iv) **Military Department**: Air Force (YDI)

(v) **Prior Related Cases, if any**: FMS case YAF - $45 million - 5Mar99

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex under separate cover

(viii) **Date Report Delivered to Congress**: 20 MAR 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Spain - AIM-120C Advanced Medium Range Air-to-Air Missiles

The Government of Spain has requested a possible sale of 31 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), eight Captive Air Training Missiles, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, publications and technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support. The estimated cost is $19 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Spain while enhancing weapon system standardization and interoperability with U.S. forces.

Spain needs these additional missiles to enhance the air-to-air self-defense capability of their F-18 aircraft and provide for increased interoperability with U.S. forces. Spain will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–7639 Filed 3–28–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to alter system of records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration consists of adding a new category of individuals covered by the system of records, i.e., NIMA personnel who are claiming reimbursement of their real estate expenses for either the sale or purchase of their residence associated with a permanent change of station.

DATES: This proposed action will be effective without further notice on april 29, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Avenue, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Ms. Christine May on (301) 227–4142.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 20, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

B0402–05; {tc /11 "B0402–05}

SYSTEM NAME:

Legal Claims File (July 13, 1995, 60 FR 36124).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "NIMA personnel and other individuals having a claim against the Government for loss, damage, or destruction of personal property or for "NIMA personnel who are claiming reimbursement of their real estate expenses for either the sale or purchase of their residence associated with a permanent change of station (PCS). Any individual filing a tort claim against NIMA for damages, loss or destruction of property, personal injury or death resulting from negligence or

wrongful act, or omission of acts by NIMA personnel and individuals against whom the Agency has legal claim.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 28 U.S.C. 2671–2680, Federal Torts Claims Act and II JTR, Chapter 14 (Joint Travel Regulations)''.

PURPOSE(S):

Delete entry and replace with ''To document claims against the U.S. Government, involving NIMA personnel or property, for damage, loss, or destruction of personal property. To document claims of NIMA employees concerning real estate reimbursement claims adjudicated by the Office of the General Counsel.''

* * * * *

STORAGE:

Add to entry ''and electronic records are maintained on computer server accessible only by authorized user name and password.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a secured/locked file cabinets with access limited to authorized personnel whose duties require access. Automated files are protected by user name and password and are stored in a database that requires additional access permissions''.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Related forms, correspondence, investigative reports and information gathered in anticipation of litigation, and opinions of Counsel and the NIMA individual's claim form and accompanying documents and records from the NIMA Travel Office.''

* * * * *

B0402–05; {**tc** **11 ''B0402–05**}

SYSTEM NAME:

Legal Claims File.

SYSTEM LOCATION:

Primary System—Office of the General Counsel, National Imagery and Mapping Agency, Mail Stop L–32, 3200 S. Second Street, St. Louis, MO 63118–3399.

Decentralized Segments—Staff Judge Advocate, ATTN: ATZT–JA–CO, 125 East 8th Street, Fort Leonard Wood, MO 65473–8942.

Military District of Washington, ATTN: PAWJA–LA, 204 Lee Avenue, Fort Myer, VA 22211–1199.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIMA personnel and other individuals having a claim against the Government for loss, damage, or destruction of personal property or for NIMA personnel who are claiming reimbursement of their real estate expenses for either the sale or purchase of their residence associated with a permanent change of station (PCS). Any individual filing a tort claim against NIMA for damages, loss or destruction of property, personal injury or death resulting from negligence or wrongful act, or omission of acts by NIMA personnel and individuals against whom the Agency has legal claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's claims, related correspondence and processing papers, investigative reports, recommendations and opinions of the General Counsel's Office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 28 U.S.C. 2671–2680, Federal Torts Claims Act and II JTR, Chapter 14 (Joint Travel Regulations).

PURPOSE(S):

To document claims against the U.S. Government, involving NIMA personnel or property, for damage, loss, or destruction of personal property. To document claims of NIMA employees concerning real estate reimbursement claims adjudicated by the Office of the General Counsel.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of NIMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper record in file folders and electronic records are maintained on computer server accessible only by authorized user name and password.

RETRIEVABILITY:

Filed alphabetically by last name of employee or by case name.

SAFEGUARDS:

Records are maintained in a secured/locked file cabinets with access limited to authorized personnel whose duties require access. Automated files are protected by user name and password and are stored in a database that requires additional access permissions

RETENTION AND DISPOSAL:

Disapproved claims and claims involving a minor are destroyed 10 years after final action on the case. Approved claims are destroyed 5 years after final action on the case. PCS records that are reviewed by the Office of General Counsel are retained for 5 years and disposed of after 5 years by shredding. No records are transferred to the records center.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, ST L–32, National Imagery and Mapping Agency, 3200 S. Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves contained in this system should address written inquiries to National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail Stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Road, Mail Stop D–10, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number, and Social Security Number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Related forms, correspondence, investigative reports and information gathered in anticipation of litigation, and opinions of Counsel and the NIMA individual's claim form and

accompanying documents and records from the NIMA Travel Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–7541 Filed 3–28–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration will expand the category of individuals covered.

DATES: This proposed action will be effective without further notice on April 29, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 19, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records (August 7, 1997, 62 FR 42528).

A0040–5 DASG

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Active duty army, their family members, U.S. Army Reserve, National Guard on active duty or in drill status, U.S. Military Academy and Reserve Officer Training Corps cadets, when engaged in directed training, foreign national military assigned to Army components, Department of the Army civilian and non-appropriated fund personnel employed by the Army for whom specific occupational health examinations have been conducted and/or requested.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number, date and place of birth, marital status, dates of medical surveillance tests and their results; documents reflecting the training, experience and certification to work within hazardous environments; including personnel monitoring results and work are monitoring readings. Exposures to chemicals, radiation, physical environment, non-human primates, and similar and related documents; personnel protective equipment and medical programs required to limit exposure to environmental safety and health hazards are also included.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''To maintain a permanent record of work places, training, exposures, medial surveillance, and any medical care provided for eligible individuals.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are maintained by employing office until employee is separated at which time records are filed with the individual personnel record for 30 years. GB agent records maintain for 40 years then destroy.''

* * * * *

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records.

SYSTEM LOCATION:

U.S. Army Medical Command, 1216 Stanley Road, Suite 25m Fort Sam Houston, TX 78234–5053.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty army, their family members, U.S. Army Reserve, National Guard on active duty or in drill status, U.S. Military Academy and Reserve Officer Training Corps cadets, when engaged in directed training, foreign national military assigned to Army components, Department of the Army civilian and non-appropriated fund personnel employed by the Army for whom specific occupational health examinations have been conducted and/or requested.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date and place of birth, marital status, dates of medical surveillance tests and their results; documents reflecting the training, experience and certification to work within hazardous environments; including personnel monitoring results and work are monitoring readings. Exposures to chemicals, radiation, physical environment, non-human primates, and similar and related documents; personnel protective equipment and medical programs required to limit exposure to environmental safety and health hazards are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; 29 U.S.C. 668, Programs of Federal Agencies; 29 CFR 1910, Occupational Safety and Health Standards; Army Regulation 40–5, Preventive Medicine; E.O. 12223, Occupational Safety Health Programs for Federal Employees; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a permanent record of work places, training, exposures, medial surveillance, and any medical care provided for eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to appropriate Government agencies whose responsibility falls within the occupational health statutes identified under 'Authority'' above.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, printouts, magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate an official need to know. Information in automated media are further protected from unauthorized access in locked rooms. All individuals afforded access are given periodic orientations concerning sensitivity of personal information and requirement to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are maintained by employing office until employee is separated at which time records are filed with the individual personnel record for 30 years. GB agent records maintain for 40 years then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial determination are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Army Medical records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–7540 Filed 3–28–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be reviewing the fiscal plan for next year, the University's Distance Learning program, receiving the annual ethics briefing, and reviewing the University's curriculum mapping initiative. All sessions of the meeting will be open to the public.

DATES: The meetings will be held on Tuesday, April 30, 2002, from 9 a.m. to 4 p.m. and on Wednesday, May 1, 2002, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Marine Corps University General Alfred M. Gray Research Center, Rooms 165–166, 2040 Broadway Street, Quantico, VA 22134.

FOR FURTHER INFORMATION CONTACT: Garry Smith, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, VA 22134, telephone number (703) 784–4037.

Dated: March 8, 2002.

T.J. Welsh,

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

[FR Doc. 02–7559 Filed 3–28–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 28, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate

of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 25, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Teacher Recruitment Application Package.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 125.

Burden Hours: 20,000.

Abstract: This application package is essential for States and partnerships to apply for new awards under the Teacher Quality Enhancement Grants Program's Fiscal Year 2002 Teacher Recruitment competition.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–7573 Filed 3–28–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 28, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 25, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Revision.

Title: Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note.

Frequency: On occasion, annually.

Affected Public: Individuals or household; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,887,200.

Burden Hours: 2,165,400.

Abstract: This promissory note is the means by which a Federal Stafford Program Loan borrower promises to repay his or her loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO__IMG__Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via her Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–7574 Filed 3–28–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 47.076]

Mathematics and Science Partnerships

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002 under a grants competition to be administered by the National Science Foundation in collaboration with the Department.

Purpose of Program: The Mathematics and Science Partnerships (MSP) is intended to improve the academic achievement of students in mathematics and science through partnerships of organizations providing education from pre-kindergarten through postsecondary schooling. The MSP is a jointly funded initiative supported by the National Science Foundation (NSF) and the Department.

Note: The Department and NSF are cooperating to implement a single grants competition that NSF is administering. For FY 2002 NSF has committed $160 million, and the Department $12.5 million, to support the MSP. This notice describes the statutory requirements for Department funding under the MSP, and informs interested applicants how to apply for these funds.

Eligible Applicants: To receive the Department's MSP funding, a partnership must comprise, at minimum, a State educational agency (SEA), a mathematics, science, or engineering department of an institution of higher education (IHE), and a high-need local educational agency (LEA). The lead applicant may be any one of these entities. The term ''high-need LEA'' is defined in the ''Requirements for FY 2002 Competition'' section of this notice.

Deadline for Transmittal of Applications: April 30, 2002.

Deadline for Intergovernmental Review: July 1, 2002.

Estimated Available Funds: $12,500,000.

Estimated Range of Awards: $100,000–$1,500,000 per year for up to 5 years.

Estimated Average Size: $700,000 per year.

Estimated Number of Awards: 10–20.

Note: The Department is not bound by any estimates in this notice. Future-year funding depends on the availability of appropriations.

Project Period: Up to 60 months.

SUPPLEMENTARY INFORMATION: The President's plan for improving American education, the No Child Left Behind initiative, is embedded in the major revisions to the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110). The President's plan includes the MSP, an initiative to improve student achievement in mathematics and science. The MSP builds on the Nation's dedication to educational reform through—

- Support of partnerships that unite the efforts of local school districts with science, mathematics, engineering, and education faculties of colleges and universities and other individuals and entities with an interest in improving student achievement in mathematics and science; and
- High expectations and achievement for all students.

The MSP Program is newly authorized in title II, part B of the Elementary and Secondary Education Act (ESEA). Together, the funds committed by NSF and the funds that the Congress appropriated to the Department for the MSP will support projects to raise student achievement in these core subject areas by giving teachers greater knowledge, understanding, and appreciation of the mathematics and science they teach.

As section 2201 of the ESEA explains, the program would specifically meet this broad objective by encouraging SEAs, IHEs, high-need LEAs, and schools to participate in programs that—

1. Improve and upgrade the status and stature of mathematics and science teaching by encouraging IHEs to assume greater responsibility for improving mathematics and science teacher education;
2. Focus on the education of mathematics and science teachers as a career-long process;
3. Bring mathematics and science teachers together with scientists, mathematicians, and engineers to improve the teachers' content knowledge and teaching skills; and
4. Develop more rigorous mathematics and science curricula that are aligned both with challenging State and local academic achievement standards, and the standards expected for postsecondary study in engineering, mathematics, and science.

The complete text of title II, part B is available on the Internet at: *www.ed.gov/legislation/ESEA02/pg26.html*.

The Department and NSF are collaborating to implement the MSP in ways that will maximize services and technical assistance to grantees by eliminating duplicative efforts of the two agencies and, at the same time, building on the strengths of each agency. There will be a single grant competition this year administered by NSF with the collaboration of the Department. A single set of reviewers will review all applications. After they have recommended those applications that they believe are of highest quality, the Department will make awards with Title II, part B funds to those that meet the special criteria contained in the statute.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, to make timely grant awards in FY 2002, the Secretary has decided to issue these final requirements without first publishing them as proposals for public comment. These requirements will apply to the FY 2002 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

At a later date the Assistant Secretary plans to publish a notice of proposed requirements for this program and offer interested parties the opportunity to comment. The proposed requirements would apply to grant competitions under the program beginning in FY 2003.

The remainder of this notice explains the application content, selection criteria, and other information that prospective applicants will need to know to qualify for MSP grants that the Department will competitively award under title II, part B.

Requirements for FY 2002 Competition

NSF published a grant solicitation for the MSP on January 31, 2002 (announcement NSF–02–061). This solicitation gives applicants until April 30, 2002, to submit their applications, provides other rules that govern the content and formatting of these applications, and announces the selection criteria that NSF will use to assess the relative merit of each application.

All of the rules, deadlines, and selection criteria in the NSF announcement also apply to those wishing to receive MSP grants from the Department. Therefore, applicants that want to be considered for Department funding must respond to these selection criteria and application requirements, and adhere to the instructions for preparing applications contained in this NSF solicitation.

A copy of the NSF grant solicitation may be obtained on the NSF web site at: *www.ehr.nsf.gov*.

For general and continually updated information, applicants should consult the following web site: *www.nsf.gov*.

Invitational priorities. The Secretary is particularly interested in having applicants submit to NSF proposals that address one or more of the following strategies:

1. Engaging classroom teachers in mathematical or scientific research and development projects sponsored by IHEs or other private- and public-sector research organizations.
2. Engaging practicing teachers as professional colleagues who work together with scientists, mathematicians and engineers to master advanced, new content and teaching strategies.
3. Demonstrating how technology can be used in the classroom both to deepen teachers' scientific and mathematical understanding and to promote higher student achievement.
4. Establishing and evaluating the effectiveness of differential salary scales used to make the mathematics and science teaching profession more comparable in pay to the private sector. These differential salary scales would be both a tool to attract beginning teachers with deep mathematical or scientific training, and a means to create a career ladder capable of retaining highly skilled and effective teachers.

Other pre-award requirements. Consistent with section 2202 of the ESEA, before making any grant awards the Department must have the following additional information from applicants it has selected for funding:

1. The results of a comprehensive assessment of the teacher quality and professional development needs of any schools, LEAs, and SEAs that comprise the eligible partnership with respect to the teaching and learning of mathematics and science.

2. A description of how the activities to be carried out by the eligible partnership will be aligned with (a) challenging State academic content and student academic achievement standards in mathematics and science, and (b) other educational reform activities that promote student academic achievement in mathematics and science.

3. A description of how the activities to be carried out by the eligible partnership will be based on a review of scientifically based research, and an explanation of how the activities are expected to improve student academic achievement and strengthen the quality of mathematics and science instruction.

4. A description of (a) how the eligible partnership will carry out the activities described in this notice under ''Authorized Activities'', and (b) the eligible partnership's plan for evaluation and accountability as described in section 2202(c) of the ESEA.

5. A description of how the eligible partnership will continue the activities funded by this program after the original grant has expired.

Eligible partnerships. To be eligible to receive an MSP grant from the Department, a partnership must include a high-need LEA. Section 2102(3) of the ESEA defines ''high-need LEA'' to mean an LEA—

1. (a) That serves not fewer than 10,000 children from families with incomes below the poverty line; or

(b) For which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; and

2. (a) For which there is a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach; or

(b) For which there is a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

Note: Section 2102(3) of the ESEA expressly applies only to the programs authorized in title II, part A of the ESEA, the Teacher and Principal Training and Recruiting Fund, and to the title II, part C Transition to Teaching Program. However, because the MSP authorized in Title II, part B of the ESEA includes no definition of the term ''high-need LEA,'' we believe it is reasonable to have the part A definition apply to this program as well. The Department will need to confirm that participating high-need LEAs meet this definition before it can award grants of title II, part B funds.

LEA poverty rates can be found in information about the ''Application Process'' for the Rural Education Achievement Program (REAP), on the Department's web site at the following address: *www.ed.gov/offices/OESE/reap.html*

The poverty rates are available only for LEAs that are included in the National Center for Education Statistics (NCES) Common Core of Data.

The total number of students in poverty in any LEA can be found on the Census Bureau web site at: *www.census.gov/housing/saipe/sd97/*

(Note: The number of children in poverty is the number in the sixth column.)

An applicant also should consider whether its proposed activities would be enhanced by including such other entities as: other mathematics, science, engineering, business, or teacher-training departments of higher education institutions; other LEAs; public charter schools, public or private elementary or secondary schools or consortia of these schools; businesses; professional organizations of scientists, engineers, and mathematicians; and nonprofit organizations with demonstrated effectiveness in improving the quality of mathematics and science teachers.

Authorized activities. The NSF program announcement identifies the activities that a partnership may carry out, consistent with the narrative and other content of its approved application and the activities authorized in section 2202(c) of the ESEA.

Supplement, not supplant. Section 2202(a)(4) of the ESEA requires a grantee to use funds the Department awards under the MSP to supplement, and not supplant, funds that the grantee otherwise would use for activities that the program authorizes.

Administration of grants. We administer all MSP grants funded with title II, part B funds under requirements of the Education Department General Education Regulations (EDGAR). Hence, a grantee must submit any programmatic or fiscal report to the Department, not to NSF. However, as part of the joint NSF-Department collaboration, the two agencies jointly will monitor grant activities and provide technical assistance. Moreover, the two agencies intend that Department-funded projects be joined with NSF-funded projects in a common system of collaboration and support coordinated by NSF.

Special application instructions. An application for title II, part B funds must conform to the NSF protocols; otherwise, NSF may reject the application. For this reason, we advise an applicant to review carefully both the grant solicitation announcement for the MSP that NSF published on January 31, 2002 (NSF–02–061), and NSF's general guidelines in the NSF Grant Proposal Guide (GPG). The complete text of the GPG is available electronically on the NSF web site at: *www.nsf.gov*

Other program requirements. If you are a member of a partnership receiving funds from the Department under this program, you must by law (section 2202(d)(1) of the ESEA) coordinate your use of these funds with any related activities that you or the partnership carry out with funds made available under section 203 of title II, part B of the Higher Education Act (the Partnership Program component of the Teacher Quality Enhancement Grant programs).

In addition, in implementing your project, we strongly encourage you to coordinate your activities with other Department programs that have teacher quality and mathematics and science components, including the following ESEA programs: title II, part A (Improving Teacher Quality State Grants); title I, part A, (Improving Basic Programs Operated by LEAs); title I, part F (Comprehensive School Reform); and title IV, part B (21st Century Community Learning Centers).

Applicable Regulations: (a) EDGAR in 34 parts 74, 75 except for §§ 75.200–75.210, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99. (b) The special rules announced in this notice.

For Applications and Further Information Contact: To obtain a copy of the NSF solicitation, visit the NSF web site at: *www.nsf.gov*

For further information on the Department of Education portion of the MSP, call or write Alexis Radocaj, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, S.W., Room 5W234, FOB6, Washington, DC 20202–6175. Telephone: (202) 401–0821, by FAX: (202) 260–3420; or via Internet at: *Alexis.Radocaj@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

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 person listed under *For Applications and Further Information Contact.*

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat reader, which is available free at this 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: *www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 6661.

Dated: March 25, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–7644 Filed 3–28–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–168–C]

Application to Export Electric Energy; PG&E Energy Trading-Power, L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: PG&E Energy Trading-Power, L.P. (''PGET-Power'') has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 29, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–6807 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 25, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized PGET-Power to transmit electric energy from the United States to Canada using the international transmission facilities of Detroit Edison, Minnesota Power, Niagara Mohawk and New York Power Authority. On August 25, 1998, in Order EA–168–A, DOE amended PGET-Power's electricity export authorization to add the remaining major transmission interconnections with Canada. That two-year authorization expired on August 25, 2000. On July 6, 2000, PGET-Power filed an application with FE for renewal of its export authority. That authorization was issued on September 7, 2000 and will expire on September 7, 2002. On March 7, 2002, PGET-Power again filed an application for a two-year renewal of its export authority.

PGET-Power is a power marketer that does not own or control any electric generation or transmission facilities nor does it have a franchised electric service territory in the United States. PGET-Power will purchase the electric energy to be exported at wholesale from electric utilities and Federal Power Marketing Administrations in the United States.

PGET-Power proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by PGET-Power has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the PGET-Power application to export electric energy to Canada should be clearly marked with Docket EA–168–C. Additional copies are to be filed directly with Sanford L. Hartman, Assistant General Counsel, PG&E Energy Trading—Power, L.P., 7500 Old Georgetown Road, Suite 1300, Bethesda, MD 20814–6161 and Ms. Sarah Barpoulis, Senior Vice President, PG&E Energy Trading—Power, L.P., 7500 Old Georgetown Road, Suite 1300, Bethesda, MD 20814–6161.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Orders EA–168. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–168 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on March 25, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–7593 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent to Solicit Competitive Applications/Proposals for Financial Assistance

AGENCY: Rocky Flats Field Office, Department of Energy (DOE).

ACTION: Notice of intent to solicit competitive applications/proposals for financial assistance.

SUMMARY: The Rocky Flats Field Office (RFFO) of the Department of Energy is entrusted to contribute to the welfare of the nation by providing the scientific foundation, technology, policy and institutional leadership necessary to

achieve efficiency in energy use, diversity in energy sources, a more productive and competitive economy, improved environmental quality, and a secure national defense. RFFO intends to fund a series of grants in special emphasis programs to encourage programs to train Native American, African American, Hispanic American, Asian-Pacific American, Women and Disabled Students to pursue training in the fields of sciences and engineering; and to fund local community projects contributing to diversity-related programs.

DATES: Applications may be submitted by April 29, 2002. Applications received by April 29, 2002 will be considered; applications received after that date may or may not be considered depending on the status of proposal review and selection.

ADDRESSES: Department of Energy, Rocky Flats Field Office, Contracts Management Division, 10808 Highway 93, Unit A, Golden, Colorado 80403–8200.

FOR FURTHER INFORMATION CONTACT: Elaine Nix, Department of Energy Rocky Flats Field Office, 10808 Highway 93, Unit A, Golden, Colorado 80403–8200, (303) 966–2054, for application forms and additional information. Completed applications or proposals must be sent to the addresses heading.

SUPPLEMENTARY INFORMATION: DOE RFFO is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles.

Availability Of Fiscal Year 2001 Funds: With this publication; DOE RFFO is announcing the availability of up to $300,000 in grant funds for fiscal year 2001. RFFO anticipates that four or less grants will be made for a total not-to-exceed $300,000. The awards will be made through a competitive process. Projects may cover a period of up to 5 years. Funding for out-years is dependent on appropriation from Congress. Length of awards may vary by applicant.

Restricted Eligibility: Eligible applicants for the purposes of funding under this notice include organizations and institutions residing in Colorado proposing to implement minority science and engineering projects in Colorado as described in the summary section of this announcement. Applicants are encouraged to propose project cost-sharing or sharing of in-kind services or resources. The awards will be made through a competitive process to organizations and institutions located in the State of Colorado. The Catalog of Federal Domestic Assistance number assigned to this program is 81.116.

Evaluation Criteria: All responsive Applications will be reviewed by a panel composed of Department of Energy RFFO representatives. Successful proposal(s) will be selected on the opinion of panel members of proposals most able to meet the objectives best able to meet the needs of this office.

Proposals must demonstrate and will be evaluated based on the following criteria:

1. Implementation plan demonstrates experience, qualifications, capabilities, and resources necessary to successfully accomplish the proposed activities. (25%)

2. Exhibits sound administrative and financial management practices. (25%)

- Ability and willingness to perform all administrative requirements of the grant.
- The relationship between direct and indirect costs, and other financial aspects of the proposed grant, demonstrates sound financial practices.
- Cost effectiveness of projects.

3. Relationship of the proposed project to the objectives of the solicitation. (25%)

4. Qualifications of key personnel. (10%)

- Adequacy of availability and level of expertise of proposed personnel resources.
- Level of expertise of key personnel as demonstrated in resumes containing relevant education, training, and experience (resumes should include relevant project work previously conducted by individuals of the team).

5. Successful past performance of similar projects. (15%)

- Proposals lacking records of relevant past performance will receive a neutral score.

DOE RFFO hereby reserves the right to fund, in part or whole, any, all, or none of the proposals submitted in response to this request. All applicants will be notified in writing of the action taken on their applications. Applicants should allow approximately 90 days for DOE evaluation. The status of any application during the evaluation and selection process will not be discussed with applicants. Unsuccessful applications will not be returned to the applicant.

Issued in Golden, Colorado, on March 21, 2002.

D. Elaine Nix,

Contracting Officer.

[FR Doc. 02–7589 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation

AGENCY: Albuquerque Operations Office, Department of Energy.

ACTION: Notice of availability of solicitation—Geothermal Resource Exploration and Definition II (GRED II).

SUMMARY: The U. S. Department of Energy (DOE), Albuquerque Operations Office (AL), anticipates issuing Solicitation No. DE-SC04–02AL67912 for a second program on Geothermal Resource Exploration and Definition. This program is in support of the Geothermal Energy Program and has the primary objective of developing collaborative efforts to support the exploration and definition of new geothermal resources in geographically diverse regions with the objective of providing additional geothermal power. Projects may consist of up to three phases: (1) Phase I is Resource Evaluation and may include new exploration work to discover a probable geothermal resource and select a site for drilling a geothermal exploration well; (2) Phase II is Drilling and Characterization and consists of the drilling of a test well, logging and coring as appropriate, and initial testing of the well; (3) Phase III is Testing and Assessment and consists of long term flow and temperature tests in the well and final assessment of the site. Proposed projects are for up to three years and may begin at any phase, but documentation will be required for all three phases. One or more projects will be funded under the Fiscal Year 2002 funding level of up to $600,000 with a maximum DOE cost share of 80%. Funding for subsequent years is dependent on Congressional appropriations and Departmental priorities.

DATES: The solicitation will be available on April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Erwin E. Fragua, Contract Specialist, DOE/AL, at (505) 845–6442 or by e-mail at *efragua@doeal.gov*. Fax number is (505) 845–5181/4210.

SUPPLEMENTARY INFORMATION: Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The solicitation will be

available on the Internet at the following web site: *http://e-center.doe.gov*. All questions concerning this solicitation must be in writing and submitted to the specialist listed above.

Issued in Albuquerque, New Mexico March 21, 2002.

Martha L. Youngblood,

Contracting Officer, Complex Support Branch, Office of Contracts and Procurement.

[FR Doc. 02–7591 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 18, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Approve Minutes; Review Agenda
6:20 p.m.—DDFO's Comments; Action Items; Budget Update; ES&H Issues; CAB Recommendation Status; EM Project Updates
6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m. Break
7 p.m.—Presentations

- Site Wide Sediment Controls.
- Chairs Meeting Report.

7:30 p.m.—Break
7:40 p.m.—Task Force and Subcommittee Reports

- Groundwater Operable Unit.
- Surface Water Operable Unit.
- Waste Operations Task Force.
- Long Range Strategy/Stewardship.
- Community Concerns.
- Public Involvement, Nomination and Membership.

8:25 p.m.—Administrative Issues

- Review of Work Plan.
- Review of Next Agenda.
- Federal Coordinator Comments.
- Retreat Plans.

8:40 p.m.—Adjourn.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on March 26, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–7592 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EE–RM/TP–02–001]

RIN 1904–AB12

Energy Conservation Program for Consumer Products: Test Procedure for Refrigerators and Refrigerator-Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of extension of interim waiver.

SUMMARY: On August 3, 2001, the Department of Energy (DOE) published a **Federal Register** Notice granting an application for Interim Waiver to Electrolux Home Products (Electrolux) and published a Petition for Waiver from the DOE refrigerator and refrigerator-freezer test procedure. In today's action, DOE is extending the interim waiver for 180 days, or until July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Raymond at (202) 586–9611, E-mail: *michael.raymond@ee.doe.gov*, or Francine Pinto, Esq., (202) 586–7432, E-mail: *Francine.Pinto@HQ.DOE.GOV*.

SUPPLEMENTARY INFORMATION: On July 30, 2001, DOE issued an interim waiver from the DOE refrigerator and refrigerator-freezer test procedure to Electrolux. (66 FR 40689). Pursuant to 10 CFR 430.27(h), ''an interim waiver will terminate 180 days after issuance or upon the determination on the Petition for Waiver, whichever occurs first. An interim waiver may be extended by DOE for 180 days. Notice of such extension and/or any modification of the terms or duration of the interim waiver shall be published in the **Federal Register**, and shall be based on relevant information contained in the record and any comments received subsequent to issuance of the interim waiver.'' The 180-day period for the interim waiver ended on January 26, 2002.

Since DOE intends to promptly amend its refrigerator and refrigerator-freezer test procedures so as to eliminate any need for continuation of the waiver, DOE has determined that it is appropriate to grant an extension of the interim waiver to Electrolux for an additional 180 days, or until July 25, 2002. Before that date, DOE will publish a direct final rule amending the refrigerator and refrigerator-freezer test procedure so as to permit all interested parties to calculate the long-time automatic defrost test period in the

same manner recommended by the Association of Home Appliance Manufacturers (AHAM) in its comment on Electrolux's petition. AHAM commented that the four-hour limitation of the test should commence when the defrost heater is initiated, rather than at the beginning of the second part of the two-part test period. AHAM stated that it has had discussions with its members regarding its proposed change, and is not aware of anyone who disagrees with its position.

DOE views this change to the test procedure as noncontroversial and does not anticipate any adverse comments. In fact, all comments received subsequent to issuance of the interim waiver were favorable to this change to the test procedure. At the same time as the publication of the direct final rule, DOE will issue a notice of proposed rulemaking (NOPR) with the same amendment as contained in the direct final rule so that if adverse comments are received the comments can be addressed in a subsequent final rule based on the NOPR.

Issued in Washington, DC, on March 25, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 02–7590 Filed 3–28–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–7]

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 March 18, 2002 Through March 22, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020111, DRAFT EIS, AFS, MT, Lolo National Forest Post Burn Management Activities, Implementation, Ninemile, Superior and Plains Ranger Districts, Mineral Missoula and Sanders Counties, MT, *Comment Period Ends:* May 13, 2002, *Contact:* Deborah L. R. Austin (406) 329–3750.

EIS No. 020112, DRAFT EIS, AFS, ID, Brush Boulder Project, Proposed Vegetation Management, Road Construction, Reconstruction and Decommissioning, North Fork Payette River, Boise National Forest, Cascade Ranger District, Valley County, ID, *Comment Period Ends:* May 13, 2002, *Contact:* Keith Dimmett (208) 382–7430.

EIS No. 020113, FINAL EIS, BLM, NM, Santo Domingo Pueblo and Bureau of Land Management Proposed Land Exchange Project, Sandoval and Santa Fe Counties, NM, *Wait Period Ends:* April 29, 2002, *Contact:* Debby Lucero (505) 761–8787.

EIS No. 020114, DRAFT EIS, BLM, CA, Imperial Sand Dunes Recreation Area, Revising and Updating the Recreation Area Management Plan and Amendment to the California Desert Conservation Area Plan, Imperial County, CA, *Comment Period Ends:* June 28, 2002, *Contact:* Jim Komastinsky (760) 337–4427.

EIS No. 020115, FINAL EIS, FHW, MO, MO–63 Corridor Project, Transportation Improvement extending from south of the Phelps/Maries County Line and South of Route W near Vida, Funding and COE Section 404 Permit, City of Rolla, Phelps and Maries Counties, MO, *Wait Period Ends:* April 29, 2002, *Contact:* Allen Masuda (573) 638–2620.

EIS No. 020116, DRAFT EIS, COE, FL, Miami River Project, River Sediments Dredging and Disposal Maintenance Dredging, Dredged Material Management Plan, Biscayne Bay, City of Miami, Miami-Dade County, FL, *Comment Period Ends:* May 13, 2002, *Contact:* Kenneth R. Dugger (904) 232–1686.

EIS No. 020117, DRAFT SUPPLEMENT, FHW, WV, New River Parkway Project, New and Relevant Information, Design, Construction and Management between I–64 Interchanges to Hinton, Raleigh and Summers Counties, WV, *Comment Period Ends:* June 07, 2002, *Contact:* Greg Akers (304) 558–2885.

EIS No. 020118, DRAFT EIS, FHW, NC, Second Bridge to Oak Island project, Transportation Improve from SR–1104 (Beach Drive) to NC–211, COE Section 404 Permit and US Coast Guard Permit, Federal Aid Project No. STP.1105(6), State Project No. 8.2231201, and TIP NO. R–2245, Brunswick County, NC, *Comment Period Ends Due:* April 29, 2002, *Contact:* Nicholas L. Graf (919) 856–4346.

EIS No. 020119, DRAFT EIS, BPA, WA, Maiden Wind Farm Project, Proposes to Construct and Operate up to 494 megawatts (MW) Wind Generation on Privately- and Publicly-Owned Property, Conditional Use Permits, Benton and Yakima Counties, WA, *Comment Period Ends:* May 15, 2002, *Contact:* Sarah Branun (503) 230–5115. This document is available on the Internet at: *http://www.efw.bpa.gov.*

EIS No. 020120, FINAL EIS, CGD, Programmatic EIS—Integrated Deepwater System Project, For Surface, Air, Logistics Communication and Sensor Systems, To Replace Its Aging Nation-Wide System, Nation-Wide, *Wait Period Ends:* April 29, 2002, *Contact:* Eric Johnson (202) 267–1665.

Amended Notices

EIS No. 020089, DRAFT EIS, FHW, WV, KY, Appalachian Corridor I–66 Highway Construction, US 23/119 south of Pikeville, KY eastward to the King Coal Highway southeast of Matewan, Funding and US Army COE Section 404 Permits Issuance, Pike County, KY and Mingo County, WV, *Comment Period Ends:* April 29, 2002, *Contact:* Jose Sepulveda (502) 223–6720. *Revision of FR Notice Published on 03/15/2002:* Federal Highway Administration Inadvertently Provided EPA with the Misspelling of the Contact Person's Name and the Incorrect Phone Number. The Correct Spelling of the Contact Person's Name is Sepulveda and the Correct Phone Number is 502–223–6720.

Dated: March 26, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–7647 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs

ERP No. D–AFS–F65030–IL Rating LO, Natural Area Trails Project, Construction, Reconstruction,

Maintenance and Designation of Trails for Hikers and Equestrian Use, Approval of Site-Specific Mitigation and/or Monitoring Standards, Shawnee National Forest, Jackson, Pope, Johnson, Union, Hardin and Saline Counties, IL.

Summary: EPA has no objections to the proposed repair, relocation and establishment of trails which are intended to reduce erosion and exotic plant introductions, and provide quality recreational experiences for equestrian users and hikers.

ERP No. D–BLM–K09807–NV Rating LO, Table Mountain Wind Generating Facility Project, Construction of a 150 to 205 Megawatt (MW) Wind Powered Electric Generation Facility and Ancillary Facilities, Right-of-Way Grant, Spring Mountain Range between the Communities of Goodsprings, Sandy Valley, Jean and Primm, Clark County, NV.

Summary: EPA expressed a lack of objections with the DEIS, supported the mitigation measures presented and commended BLM for its role in developing renewable energy sources.

ERP No. D–COE–E39056–FL Rating EC2, Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement Project, Fish and Wildlife Habitat Improvements, Construction, Operation and Maintenance, Osceola County, FL.

Summary: EPA requested additional information about the effects of each alternative, and expressed environmental concerns over the impacts of converting littoral wetland habitat into muck disposal islands.

ERP No. D–NOA–K91010–00 Rating EC2, US West Coast Fisheries for Highly Migratory Species Fishery Management Plan (FMP), Approval and Implementation, Ocean Waters off the States of Washington, Oregon and California a portion of the Exclusive Economic Zone (EEZ), WA, OR and CA.

Summary: The DEIS is progressive in its management of the highly migratory species fishery. However, EPA expressed environmental concern on the lack of information on bycatch in the fishery, benefits of particular mesh sizes for the drift gillnet fishery, Endangered Species Act coordination, and research actions to address information gaps.

ERP No. DB–COE–H36012–MO Rating EU2, St. Johns Bayou and New Madrid Floodway Project, Channel Enlargement and Improvement, Revised Information to Formulate and Analyze Additional Alternatives, Flood Control and National Economic Development (NED), New Madrid, Mississippi and Scott Counties, MO.

Summary: EPA rated the Authorized Project (alternative 2) as ''environmentally unsatisfactory-insufficient information'' (EU2) on the basis of significant loss of wetlands, uncertainty of achieving compensable mitigation, and an incomplete Clean Water Act Section 404(b)(1) evaluation. Alternative 3–2 was also rated EU–2 (same basis). Alternative 3–3 was rated ''environmental objections-insufficient information'' (EO–2) as this alternative reduces impacts to a contiguous tract of bottomland hardwood wetlands, and reduces the mitigation burden.

ERP No. DR–COE–H34028–00 Rating EU2, Missouri River Master Water Control Manual Review and Update, Mainstem Reservoir System, New and Updated Information, Missouri River Basin, SD, NE, IA and MO.

Summary: The Missouri River Master Manual RDEIS has no preferred alternative; thus, all alternatives were rated. The CWCP and MCP alternatives were rated ''environmentally unsatisfactory—insufficient information'' (EU–2), based on their environmental impacts which increase environmental degradation. Alternatives GP 1521, GP 1528, GP 2021 and GP 2028 were rated ''environmental concerns'' (EC–2). EPA also stated that a better discussion of a monitoring plan, and more specific discussion of how adaptive management will be implemented, should be included in the Final EIS.

ERP No. DS–FRC–L05053–WA Rating LO, Condit Hydroelectric (No. 2342) Project, Updated Information on an Application to Amend the Current License to Extend the License Term to October 1, 2006, White Salmon River, Skamania and Klickitat Counties, WA.

Summary: EPA believes that the overall environmental benefits that would be achieved by removing the dam at the end of the license term outweigh the loss of the relatively modest amount of power that the project contributes to the Western Systems Coordinating Council region of the North American Electric Reliability Council. EPA supports the selection of the Settlement Agreement alternative including recommended modifications.

Final EISs

ERP No. F–AFS–J08025–CO Nucla-Telluride Transmission Line Project, Permit Approval and Funding for Construction and Operation of a 115 kV Transmission Line between the Nucla Substation in Montrose County and either the Telluride or Sunshine Substations in San Miguel County, CO.

Summary: EPA expressed environmental concerns about a lack of quantitative analysis of the acreage of wetland and aquatic resource impacts. The level of these impacts was not clearly differentiated among the various alternatives.

ERP No. F–AFS–J65339–UT Solitude Mountain Resort Master Development Plan (MDP), Implementation, Special-Use-Permit and US Army COE Section 404 Permit Issuance, Wasatch-Cache National Forest, Salt Lake County, UT.

Summary: EPA expressed environmental concerns with water withdrawal for snowmaking associated with this project due to the potential for adverse impacts to aquatic life in Big Cottonwood Creek.

ERP No. F–AFS–L65315–ID West Fork Potlatch Timber Harvesting, Road Construction, Reforestation and Watershed Restoration, Palouse Ranger District, Clearwater National Forest, Latah County, ID

Summary: The final EIS adequately discloses the impacts and satisfactorily responded to most of EPA's comments on the draft EIS. The project is intended to benefit the landscape and EPA has no objection to the action as proposed.

ERP No. F–AFS–L65379–ID Little Weiser Landscape Vegetation Management Project, Implementation, Council Ranger District, Payette National Forest, Adams County, ID.

Summary: The final EIS adequately responded to EPA's comments on the draft EIS and EPA has no objection to the action as proposed.

ERP No. F–AFS–L65386–ID Little Blacktail Ecosystem Restoration Project, Health and Productivity of Terrestrial and Aquatic Habitats Improvement, Implementation, Idaho Panhandle National Forests, Sandpoint Ranger District, Bonner County, ID.

Summary: The final EIS responded to EPA's previous comments on the draft EIS and EPA has no objection to the action as proposed.

ERP No. F–DOE–L08057–OR Umatilla Generating Project, Gas-Fired Combined Cycle Electric Power Generation Plant Construction and Operation with a Nominal Generation Capacity of 550 megawatts (MW) for Connection to the Regional Grid at McNary Substation, Umatilla County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–L91016–AK American Fisheries Act Amendments 61/61/13/8: Amendment 61 Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Amendment 61 Groundfish of the Gulf of Alaska; Amendment 13 Bering Sea and Aleutian Islands King and Tanner Crab, and Amendment 8 to the Scallop Fishery off Alaska, Fishery Management Plans, AK.

Summary: EPA agrees with the conclusion that the weekly pollock landings and fish waste discharges by inshore processors during summer months raises environmental concerns about impacts to water quality. EPA recommends that the ROD commit to monitoring and follow-up mitigation measures to ensure that significant degradation of water quality and habitat do not result from the amendment.

ERP No. FE–NOA–L64015–AK Steller Sea Lion Protection Measures in the Alaska Groundfish Fisheries, Fishery Management Plans for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, AK.

Summary: EPA continues to have environmental concerns about the population viability of Steller sea lions.

Dated: March 26, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance, Office of Federal Activities.

[FR Doc. 02–7648 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7164–9]

National Symposium: Designating Attainable Uses for the Nation's Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is announcing plans for a national symposium on the topic of ''Designating Attainable Uses for the Nation's Waters.'' Interested citizens, government officials, and regulated parties are invited to attend the symposium. Potential speakers are invited to submit abstracts of presentations for consideration as case studies or new approaches addressing this topic. Many interested parties have expressed to EPA the need for additional guidance on establishing the protection levels or ''designated uses'' of waterbodies (*e.g.,* aquatic life, recreation, navigation) and the process to follow when making designated uses more or less protective. EPA believes it is important to resolve questions concerning use designations and is considering developing guidance addressing key questions. This symposium will help EPA hear diverse views on this subject.

DATES: The symposium will be held on June 3–4, 2002.

ADDRESSES: The symposium will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Cara Lalley, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Mail Code 4305, Washington, DC 20460; (202) 260–0314; *lalley.cara@epa.gov;* or visit *http://www.epa.gov/waterscience/standards/symposium.*

SUPPLEMENTARY INFORMATION: This symposium will include a series of short (15 minute) presentations, grouped by topic, by speakers selected from among those submitting abstracts in response to this announcement. It may also include short panel presentations, small group discussions, or an open comment session. Check *http://www.epa.gov/waterscience/standards/symposium* in May for a draft agenda.

If you need special accommodations at this meeting (for example, wheelchair access or sign language translators), you should contact Cara Lalley at (202) 260–0314 by May 24, 2002 so that EPA can make appropriate arrangements.

Dated: March 22, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–7635 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7165–9

Proposed Administrative Order on Consent With Compromise of CERCLA Response Costs

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed AOC.

SUMMARY: U.S. EPA is proposing to issue an Administrative Order on Consent (AOC) under section 106 of CERCLA at the Old American Zinc (OAZ) Superfund Site. Respondent has agreed to perform a clean up of all hazardous soil and site-related material in residential and other at-risk areas adjacent to the Site, as well as to establish control monitoring of off-site migrating air and liquid materials in order to prevent recontamination, in return for U.S. EPA waiving past response costs of approximately $71,847.55. U.S. EPA today is proposing to issue this AOC waiver of past costs because it achieves a necessary removal action at a Site where there is a problem of air-borne contamination of a nearby residential and high-risk area.

DATES: Comments on this proposed settlement must be received by April 29, 2002.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Ms. Janet Pope at (312) 353–0628 before visiting the Region V Office). Ms. Janet Pope, OPA (P–19J), U.S. Environmental Protection Agency, Region V, Office of Superfund, Removal and Enforcement Response Branch, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Ms. Janet Pope, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 353–0628.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Pope, Office of Public Affairs, at (312) 353–0628.

SUPPLEMENTARY INFORMATION: The OAZ Site is 132 acres in size and consists of the central Site that once held a smelter facility, and surrounding residential, industrial and commercial properties. The Site is bordered by Delmar Street on the north; Kings Highway and Rose Creek on the east; 45th Street on the west; and, railroad tracks of the Penn Central and Baltimore and Ohio lines on the south. The Site was discovered by the Illinois EPA in 1994. U.S. EPA became involved with the Site in 1999. After initial sampling and a November 1999 Site Assessment, U.S. EPA determined that contaminants of concern at the Site included arsenic, cadmium, lead and zinc. U.S. EPA determined that this represented an imminent and substantial threat to human health. After general notice and negotiations, between September 2000 and February 2002, U.S. EPA and the Respondent achieved an AOC for the removal action at the residential and other properties adjacent to the Site. In exchange for completion of the removal, U.S. EPA has offered the Respondent contribution protection, a covenant not to sue and waiver of the past response costs associated with the Site. These costs total approximately $71,847.55.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to Ms. Janet Pope of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

This action is taken under the authority of 42 U.S.C. section 122(i).

Wendy L. Carney,

Acting Director, Superfund Division.

[FR Doc. 02–7770 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7165–6]

Clean Water Act Section 303(d): Availability of Total Maximum Daily Loads (TMDLs) and Determinations That TMDLs Are Not Needed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 98 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Calcasieu and Ouachita river basins, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to a court order in the lawsuit *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.).

This notice also announces the availability for comment of EPA determinations that TMDLs are not needed for 20 waterbody/pollutant combinations in the Calcasieu and Ouachita river basins because new data and information show that water quality standards are being met. This proposed action would result in the removal of 20 waterbody/pollutant combinations from the Louisiana 303(d) list.

DATES: Comments must be submitted in writing to EPA on or before April 29, 2002.

ADDRESSES: Comments on the 98 TMDLs and the determinations that TMDLs are not needed for 20 waterbody/pollutant combinations should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs and the determinations that TMDLs are not needed are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *www.epa.gov/region6/water/tmdl.htm,* or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

EPA Seeks Comments on 98 TMDLs

By this notice EPA is seeking comment on the following 98 TMDLs for waters located within the Calcasieu and Ouachita river basins:

Subsegment	Waterbody name	Pollutant
030301	Calcasieu River & Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Contaminated sediments (Mercury, PAHs, and toxicity).
030306	Bayou Verdine (Estuarine)	Contaminated sediments (4,4′-DDT, Methoxychlor, PAHs, Zinc, Calcium, and toxicity).
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Contaminated sediments (Mercury, toxicity,and organics).
030305	Contraband Bayou (Estuarine)	Copper.
031201	Calcasieu River Basin—Coastal Bays and Gulf Waters to State 3 mile limit.	Mercury.
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Metals (Copper, Lead, and Mercury).
030304	Moss Lake (Estuarine)	Metals (Copper, Mercury).
030306	Bayou Verdine (Estuarine)	Metals (Mercury, Nickel).
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Metals (Copper, Nickel, and Mercury).
030305	Contraband Bayou (Estuarine)	Pathogen indicators.
030701	Bayou Serpent	Pesticides (Fipronil).
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Priority organics (PAHs).
030306	Bayou Verdine (Estuarine)	Priority organics (Phenols, and 1,2-Dichloroethane).
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Priority organics (PCBs, Tetrachloroethane, Hexachlorobenzene, Hexachlorobutadiene, and Bromoform).
030702	English Bayou—Headwaters to Calcasieu River	Suspended solids.
030702	English Bayou—Headwaters to Calcasieu River	Turbidity.
081501	Castor Creek—Headwaters to Little River	Chlorides.
0809(04)	Little Bayou Boeuf/Wham Brake (within segment 0809)	Dioxins.
080912	Tisdale Brake/Staulkinghead Creek from origin to Little Bayou Boeuf.	Dioxins.
080101	Ouachita River—Arkansas State Line to Columbia Lock and Dam (Scenic from the Arkansas State Line to intersection with Bayou Bartholomew—22 miles).	Mercury.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Nitrogen.
080102	Bayou Chauvin	Noxious aquatic plants.
080201	Ouachita River—Columbia Lock and Dam to Jonesville	Nutrients.

Subsegment	Waterbody name	Pollutant
080302	Black River—Corps of Engineers Control Structure to Red River.	Nutrients.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Nutrients.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Nutrients.
080910	Clear Lake	Nutrients.
081002	Joe's Bayou—Headwaters to Bayou Macon	Nutrients.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou).	Nutrients.
081202	Lake St. Joseph (Oxbow Lake) Nutrients.	
080201	Ouachita River—Columbia Lock	Organic enrichment/low DO.
080501	Bayou de L'Outre—Arkansas State to Ouachita River (Scenic).	Organic enrichment/low DO.
080607	Corney Bayou—from Arkansas State Line to Corney Lake (Scenic).	Organic enrichment/low DO.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Organic enrichment/low DO.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Organic enrichment/low DO.
080910	Clear Lake	Organic enrichment/low DO.
081002	Joe's Bayou—Headwaters to Bayou Macon	Organic enrichment/low DO.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou).	Organic enrichment/low DO.
081202	Lake St. Joseph (Oxbow Lake)	Organic enrichment/low DO.
080102	Bayou Chauvin—Headwaters to the Ouachita River	Pathogen indicators.
080610	Middle Fork of Bayou D'Arbonne—From origin to Bayou D'Arbonne Lake (Scenic).	Pathogen indicators.
080905	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Pathogen indicators.
080910	Clear Lake	Pathogen indicators.
081001	Bayou Macon	Pathogen indicators.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Pathogen indicators.
080901	Boeuf River—Arkansas State Line to Ouachita River	Pesticides (Carbofuran, DDT, and Toxaphene).
080903	Big Creek—Headwaters to Boeuf	Pesticides (Carbofuran, Atrazine, DDT, and Methyl Parathion).
081001	Bayou Macon	Pesticides (DDT).
081002	Joe's Bayou—Headwaters to Bayou Macon	Pesticides (Carbofuran, and DDT).
081201	Tensas River—Headwaters to Jonesville including Tensas Bayou.	Pesticides (Carbofuran, Toxaphene, and DDT).
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Phosphorus.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Priority organics (Dioxins).
081501	Castor Creek—Headwaters to Little River	Salinity/TDS.
080202	Bayou Louis	Siltation.
080901	Boeuf River—Arkansas State Line to Ouachita River	Siltation.
080102	Bayou Chauvin	Suspended solids.
080901	Boeuf River—Arkansas State Line to Ouachita River	Suspended solids.
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou).	Suspended solids.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Suspended solids.
080910	Clear Lake	Suspended solids.
081001	Bayou Macon—Arkansas State Line to Tensas River	Suspended solids.
081002	Joe's Bayou—Headwaters to Bayou Macon	Suspended solids.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou).	Suspended solids.
081202	Lake St. Joseph (Oxbow Lake)	Suspended solids.
080102	Bayou Chauvin	Turbidity.
080901	Boeuf River—Arkansas State Line to Ouachita River	Turbidity.
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou).	Turbidity.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia.	Turbidity.
081001	Bayou Macon—Arkansas State Line to Tensas River	Turbidity.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou).	Turbidity.

EPA Seeks Comments on Proposed Determinations That 20 TMDLs for Waterbody/Pollutant Combinations Are Not Needed Due to Assesssment of New Data and Information That Shows They Are Meeting WQS

Subsegment	Waterbody name	Pollutant
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (includes Coon Island and Clooney Island Loops).	Ammonia
030302	Lake Charles (Estuarine)	Non-priority organics
030306	Bayou Verdine	Non-priority organics
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Non-priority organics
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Other inorganics
030302	Lake Charles (Estuarine)	Priority organics
030303	Prien Lake	Priority organics
030304	Moss Lake (Estuarine)	Priority organics
030305	Contraband Bayou (Estuarine)	Priority organics
030401	Calcasieu River—Calcasieu Ship Channel Below Moss Lake to the Gulf of Mexico (Estuarine) (Includes Monkey Island Loop).	Priority organics
030402	Calcasieu Lake (Estuarine)	Priority organics
080102	Bayou Chauvin—Headwaters to the Ouachita River	Ammonia
080901	Boeuf River—Arkansas State Line to Ouachita River	Ammonia
080905	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Ammonia
081401	Dugdemona River—Headwaters to junction with Big Creek	Dioxins
081001	Bayou Macon—Arkansas State Line to Tensas River	Nutrients
081402	Dugdemona River—From Big Creek to Little River	Organic enrichment/low DO
081609	Hemphill Creek—Headwaters to Catahoula Lake (includes Hair Creek).	Organic enrichment/low DO
080901	Boeuf River—Arkansas State Line to Ouachita River	Phosphorus
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou).	Phosphorus

EPA requests that the public provide any water quality related data and information that may be relevant to the calculations for these 98 TMDLs, or any other comments relevant to the 20 proposed determinations that TMDLs are not needed. EPA will review all data and information submitted during the public comment period and revise the TMDLs and determinations where appropriate. EPA will then forward the TMDLs to the Court and the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the TMDLs into its current water quality management plan. EPA also will revise the Louisiana 303(d) list as appropriate.

Dated: March 21, 2002.

Jayne Fontenot,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 02–7771 Filed 3–28–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 25, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current 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 May 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0370.

Title: Part 32, Uniform System of Accounts for Telecommunications Companies.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 239.

Estimated Time per Response: 6,123.41 hrs. (avg.).

Frequency of Response: Recordkeeping; on occasion reporting requirements.

Total Annual Burden: 1,463,496 hrs.

Total Annual Costs: None.

Needs and Uses: The Uniform System of Accounts is an historical financial accounting system that reports the results of operational and financial events in a manner that enables both management and regulators to assess these results within a specified accounting period. Subject respondents are telecommunications companies. Entities having annual revenues from regulatory telecommunications operations of less than $114 million are designated as Class B and are subject to a less detailed accounting system than are those designated as Class A companies. In the Order on Reconsideration issued in CC Docket Number 00–199, the FCC reinstated Account 3400, Accumulated Amortization-Tangible.

OMB Control Number: 3060–0556.

Title: Special Requirements for 406.025 MHz EPIRBs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individual or household; business and or other profit entities.

Number of Respondents: 9,500.

Estimated Time per Response: 5.04 mins (0.084 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 798 hours.

Total Annual Cost: $0.

Needs and Uses: 47 CFR Section 80.1061 requires owners of 406.025 MHz Emergency Position Indicating Radiobeacons (EPIRBs) to register information such as name, address, and type of vessel with the National Oceanic and Atmospheric Administration (NOAA). If the collection were not conducted, NOAA would not have access to this information, which would increase the time needed to complete a search and rescue operation.

OMB Control Number: 3060–0896.

Title: Broadcast Auction Form Exhibits.

Form Number: FCC 175.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, local, or tribal government.

Number of Respondents: 5,650.

Estimated Time per Response: 0.5 to 88 hrs.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 10,903 hrs.

Total Annual Costs: $32,535,500.

Needs and Uses: The FCC Rules require that broadcast auction participants submit exhibits disclosing ownership, bidding agreements, and engineering data. The Commission staff use these data to ensure that applicants are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive the new entrant bidding credit, if applicable. Exhibits regarding joint bidding agreements are designed to prevent collusion. Submission of engineering exhibits for non-table services enables the Commission to determine which applications are mutually exclusive.

OMB Control Number: 3060–0906.

Title: Annual DTV Report.

Form Number: FCC 317.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 525.

Estimated time per response: 2.5 to 4.0 hours.

Frequency of Response: Recordkeeping; annual reporting requirement.

Total annual burden: 1,150.

Total annual costs: $52,500.

Needs and Uses: The FCC has established a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees in compliance with section 336(e)(1) of the Telecommunications Act of 1996. On October 11, 2001, the Commission adopted a Report and Order, which extended this requirement to noncommercial educational television licensees. Licensees use FCC Form 317 to report whether they provided ancillary or supplementary services, which services were provided, the services provided that are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. The data are collected annually from digital television licensees. Licensees providing services subject to a fee are also required to file FCC Form 159 (3060–0589) annually to remit the required fee. Each licensee will be required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. The FCC staff uses the data to ensure that DTV licensees comply with the requirements of section 336(e) of the Communications Act.

OMB Control Number: 3060–1003.

Title: Telecommunications Carrier Emergency Contact Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; and State, local or tribal government.

Number of Respondents: 5,000.

Estimated Time per Response: 10 mins. (0.167 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 834 hrs.

Total Annual Costs: None.

Needs and Uses: In response to the events of September 11, 2001, the FCC created a Homeland Security Policy Council to assist the Commission in evaluating and strengthening measures for protecting U.S. communications infrastructure and facilities from further terrorist attacks; to assist the Commission in ensuring rapid restoration of communications capabilities after disruption by a terrorist threat or attack; and to assist the Commission in ensuring that public safety, public health, and other emergency and defense personnel have effective communications services available to them in the immediate aftermath of any terrorist attack within the United States. To fulfill this mission, the FCC's Homeland Security Policy Council will contact key communications providers to determine the extent of a communications disruption and appropriate agency response.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7578 Filed 3–28–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2541]

Petitions for Reconsideration of Action in Rulemaking Proceedings

March 21, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–

A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by April 15, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotments (MM Docket No. 01–5).

Number of Petitions Filed: 1.

Subject: Amendment of the Digital TV Table of Allotments (MM Docket No. 00–121, RM–9674).

Number of Petitions Filed: 1.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7566 Filed 3–28–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information required by FEMA to revise National Flood Insurance Program Maps.

SUPPLEMENTARY INFORMATION: With the passage of the Flood Disaster Protection Act of 1973, an owner of a structure, with a federally backed mortgage, located in the 1-percent annual chance floodplain, was required to purchase federal flood insurance. This was in response to the escalating damage caused by flooding and the unavailability of flood insurance from commercial insurance companies. However, the 1-percent annual chance floodplain may change due to changes within the floodplain, or may be more accurately depicted through the use of more up-to-date methods and data. FEMA will issue a Letter of Map Revision to officially revise the 1-percent annual chance floodplain.

Collection of Information

Title. Revisions to National Flood Insurance Program Maps: Application Forms for Letters of Map Revision and Conditional Letters of Map Revision.

Type of Information Collection. Revision of a currently approved collection.

OMB Number: 3067–0148.

Form Numbers. FEMA forms 81–89, 81–89A, 81–89B, 81–89C, 81–89D, 81–89E.

Abstract. The certification forms (referred to as MT–2 series forms) are designed to assist requesters in gathering information that FEMA needs to revise a National Flood Insurance Program map.

FEMA Form 81–89, Overview and Concurrence Form, describes the location of the request, what is being requested, and what data are required to support the request. In addition, NFIP regulations 44 CFR 65.5(a)(4) require that a community official certify that the request complies with minimum floodplain management criteria specified in 44 CFR 60.3. This form ensures that this requirement is fulfilled prior to the submittal of the request to FEMA.

FEMA Form 81–89A, Riverine Hydrology and Hydraulics Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of hydrologic and hydraulic analyses performed in support of a revision request. It also addresses more common regulatory issues.

FEMA Form 81–89B, Riverine Structures Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of revision requests involving new or modified structures in riverine flood hazard areas; FEMA Form 81–89C, Coastal Analysis Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of coastal analyses performed in support of a revision request. It also addresses more common regulatory issues.

FEMA Form 81–89D, Coastal Structures Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of revision requests involving new or modified structures in coastal flood hazard areas.

FEMA Form 81–89E, Alluvial Fan Flooding Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of alluvial fan flooding analyses performed in support of a revision request.

Estimated Total Annual Burden Hours.

FEMA Forms	No. of Respondents (A)	Frequency of Responses (B)	Hours Per Response (C)	Annual Burden Hours (A x B x C)
81–89	1,400	Annual	1.0	1,400
81–89A	1,400	Annual	3.0	4,200
81–89B	1,400	Annual	7.0	9,800
81–89C	1,400	Annual	1.0	1,400
81–89D	1,400	Annual	1.0	1,400
81–89E	1,400	Annual	1.0	1,400
Total	1,400		14.0	19,600

Estimated Cost. Cost to respondents is estimated to be $980,000 annually (19,600 annual burden hours x $50 per hour), while the cost to the Federal Government is estimated to be $2,500,000 annually.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Cecelia Lynch, FEMA Federal Insurance and Mitigation Administration at (202) 646–7045 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.anderson@fema.gov.*

Dated: March 22, 2002.

Reginald Trujillo,

Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7637 Filed 3–28–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning a continuing collection of information for personal property loss or damage claims made by FEMA employees.

SUPPLEMENTARY INFORMATION: 31 U.S.C 3721 requires employees of FEMA who file a claim with the Agency for the loss or damage to personal property to substantiate the claim as a condition of payment by the agency. Agency personnel provide information to support their claims against FEMA for personal property damage incident to their service. The Agency's substantiation requirements are set forth in 44 CFR 11.76. The information provided by personnel is used by FEMA to determine the appropriate disposition and payment of claims.

Collection of Information

Title: Claims of Federal Personnel for Personal Property Loss or Damage.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0167.

Form Numbers: None.

Abstract: 31 U.S.C 3721 requires FEMA employees who file a claim with the Agency for the loss or damage to personal property to substantiate their claims as a condition of payment by the agency. Agency personnel provide information to make claims against FEMA for personal property damage incident to their service. The Agency's substantiation requirements are set forth at 44 CFR 11.76. The information provided by personnel is used by FEMA to determine the appropriate disposition and payment of claims.

Affected Public: Federal Government.

Estimated Total Annual Burden Hours: 7.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Edward Broyles, General Attorney, FEMA Office of General Counsel, (202) 646–3961, for additional information. You may contact Ms. Muriel B. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.anderson@fema.gov.*

Dated: March 20, 2002.

Reginald Trujillo,

Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 02–7638 Filed 3–28–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–2]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Federal Housing Finance Board (Finance Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to members and other eligible institutions.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Gwen R. Grogan, Acting Deputy Director, Office of Supervision (202) 408–2892; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks to: (1) Accept demand deposits from member institutions; (2) be drawees of payment instruments; (3) engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions; and (4) have such incidental powers as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Finance Board.

Section 975.6(c) of the Finance Board's regulations (12 CFR 975.6(c)) provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedule is for the only Bank that offers item processing services to its members and other qualified financial institutions. Most of the remaining Banks provide other Correspondence Services, which may include securities safekeeping, disbursements, coin and

currency, settlement, electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (2002 NOW/DDA Services) (Services not provided)

District 2.—Federal Home Loan Bank of New York (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 4.—Federal Home Loan Bank of Atlanta (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 5.—Federal Home Loan Bank of Cincinnati (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 6.—Federal Home Loan Bank of Indianapolis (2002 NOW/DDA Services)

Fee Schedules

Checking Account Processing

I.—CHECKING ACCOUNT SERVICE TRANSACTION CHARGES

[Effective February 1, 2000]

Monthly volume	Safekeeping	Turnaround (daily or cycled)	Complete	Full service image*		Limited service image*	
	Per item	Per item	Per item	Per item	Per statement	Per item	Per statement
0–5,000	$.054	$.0675	$.0875	$.06	$.40	$.02	$.40
5–10,000	.046	.0625	.0855	.06	.40	.02	.40
10–15,000	.045	.0585	.0835	.06	.40	.02	.40
15–25,000	.040	.0515	.0825	.06	.40	.02	.40
25–50,000	.039	.0475	.0805	.06	.40	.02	.40
50–75,000	.035	.0445	.0765	.06	.40	.02	.40
75–100,000	.032	.0415	.0755	.06	.40	.02	.40
100,000 and up	.030	.0385	.0745	.06	.40	.02	.40

Note.—Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

Monthly volume	Image archive limited service*	CD image limited service	
	Per item	Per item	Per CD
0–5,000	$.0125	$.0075	$10.00
5–10,000	.0125	.0075	10.00
10–15,000	.0125	.0075	10.00
15–25,000	.0125	.0075	10.00
25–50,000	.0125	.0075	10.00
50–75,000	.0125	.0075	10.00
75–100,000	.0125	.0075	10.00
100,000 and up	.0125	.0075	10.00

Note.—Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

II. ANCILLARY SERVICE FEES

Large Dollar Signature Verification	$0.75
Over-the-counters and Microfilm	0.045
Return Items	2.40
Photocopies** and Facsimiles	2.50
Certified Checks	1.00
Invalid Accounts	0.65
Late Returns	0.50
Invalid Returns	0.50
No MICR/OTC	0.50
Settlement Only	100.00 per month
+Journal Entries	3.00 each
Encoding Errors	2.75
Fine Sort Numeric Sequence	0.02
High Dollar Return Notification	N/C
Debit Entries	N/C
Credit Entries	N/C
Standard Stmt. Stuffers (up to 2)***	N/C

II. ANCILLARY SERVICE FEES—Continued

Statement Stuffing Savings (Non DDA Accounts)	0.20

Note. Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at no additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

**Photocopy request of 50 or more are charged at an hourly rate of $15.00.

***Each additional (over 2) will be charged at $.02 per statement.

b. ACH Fees

Tape transmission	$8.50 per tape.
Or originations	.045 per item.
NACHA, MPX	Actual Federal Reserve charges.
ACH entries clearing through our R&T number	.25 per item.
Settlement only	65.00 per month.
ACH returns/NOC	2.50 per item.

Collected balances will earn interest at CMS daily-posted rate.

Prices effective April 1, 1993.

c. Deposit Services

FEDERAL HOME LOAN BANK OF INDIANAPOLIS

Pre-encoded Items:	
City	$0.045 per item.
RCPC	.055 per item.
Other Districts	.09 per item.
Unencoded	.15 per item.
Food Stamp	.14 per item.
Photocopies*	2.50 per copy.
Adjustments on pre-encoded work	2.75 per error.
EZ Clear	.14 per item.
Coupons	8.25 per envelope.
Collections	6.00 per item.
Cash Letter	2.00 per cash letter.
Deposit Adjustments	.30 per adjustment.
Debit Entries	N/C.
Credit Entries	N/C.
Microfilming	N/C.
Mortgage Remittance (Basic Service)	.35.
Settlement only	100.00 per month.
+Journal Entries	3.00 each.
Courier (Photocopy request of 50 or more are charged at an hourly rate of $15.00.)	
Indianapolis (city):	8.25 per location, per day, per pick-up.
Outside Indianapolis:	prices vary per location.

N/C—No Charge.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

District 7.—Federal Home Loan Bank of Chicago (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 8.—Federal Home Loan Bank of Des Moines (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 9.—Federal Home Loan Bank of Dallas (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 10.—Federal Home Loan Bank of Topeka (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

District 11.—Federal Home Loan Bank of San Francisco (2002 NOW/DDA services) (Does not provide item processing services for third party accounts)

District 12.—Federal Home Loan Bank of Seattle (2002 NOW/DDA Services) (Does not provide item processing services for third party accounts)

Dated: March 22, 2002.

By the Federal Housing Finance Board.

James L. Bothwell,

Managing Director.

[FR Doc. 02–7529 Filed 3–28–02; 8:45 am]

BILLING CODE 6725–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–1]

Notice of Availability of the Federal Housing Finance Board Information Quality Guidelines

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) has made available its Information Quality Guidelines pursuant to the requirements of the Office of Management and Budget's (OMB's) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information

Disseminated by Federal Agencies, January 3, 2002.

DATES: Comments on the Finance Board's Information Quality Guidelines will be accepted on an ongoing basis.

ADDRESSES: Comments should be addressed to the Secretary to the Board, Federal Housing Finance Board, using the ''Feedback'' button on the Finance Board Web site, or by regular mail to 1777 F St., NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Andy Taylor, Acting Chief Information Officer, (202) 408–2830; or Jennifer R. Salamon, Information Technology Program Analyst, (202) 408–2974; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L.106–554) directs OMB to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies.'' The OMB guidelines require each agency to prepare a draft report providing the agency's information quality guidelines. Each agency further is required to publish a notice of availability of this draft report in the **Federal Register** and to post this report on its Web site by April 1, 2002, to provide an opportunity for public comment. The Finance Board will post its draft Information Quality Guidelines on its Web site at *www.fhfb.gov* and encourages public comment on the report.

Dated: March 22, 2002.

James L. Bothwell,

Managing Director.

[FR Doc. 02–7530 Filed 3–28–02; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Dorothy M. Mawn, Woburn, Massachusetts, James Lawrence Mawn, Malden, Massachusetts, Russell A. Mawn, Vestavia Hills, Alabama, Diane Desenberg and Tomas M. Mawn, III, both of Sarasota, Florida, Mary Elizabeth Mawn-Ferullo, Woburn, Massachusetts, Martha J. Robillard, Groton, Massachusetts, Dorothy Mawn Grandchildren's Trust, Woburn, Massachusetts (trustees Mary Elizabeth Mawn-Ferullo and Russel A. Mawn), The Thomas M. Mawn, Jr., Trust Fund B, Woburn, Massachusetts (trustees Dorothy M. Mawn, Mary Elizabeth Mawn-Ferullo, and Catherine A. Webb), and the Thomas and Dorothy Mawn Family Limited Partnership, Woburn, Massachusetts (general partners Mary Elizabeth Mawn-Ferullo and Russel A. Mawn), acting in concert to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire voting shares of Northern Bank & Trust Company, Woburn, Massachusetts.

2. Thomas M. Mawn, Jr., Trust Fund B, Woburn, Massachusetts; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire voting shares of Northern Bank & Trust Company, Woburn, Massachusetts.

3. Dorothy M. Mawn, Woburn, Massachusetts; to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire voting shares of Northern Bank & Trust Company, Woburn, Massachusetts.

Board of Governors of the Federal Reserve System, March 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7553 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Mr. Jerry J. Williams, Naples, Florida; to retain voting shares of FirstBancorp, Inc., Naples, Florida, and thereby indirectly retain voting shares of Orion Bank, Naples, Florida.

Board of Governors of the Federal Reserve System, March 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7706 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise

noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Ames National Corporation, Ames, Iowa; to acquire 100 percent of the voting shares of United Bank & Trust N.A. (*de novo*), Marshalltown, Iowa.

2. Metropolitan Bank Group, Inc., Chicago, Illinois; to acquire 41.18 percent of the voting shares of Firstcom Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire voting shares of The First Commercial Bank, Chicago, Illinois.

3. Metropolitan Bancorp Inc., Chicago, Illinois; to acquire 38.24 percent of the voting shares of Firstcom Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire voting shares of The First Commercial Bank, Chicago, Illinois.

4. Plaza Bancorp Inc., Chicago, Illinois; to acquire 20.57 percent of the voting shares of Firstcom Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire voting shares of The First Commercial Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, March 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7551 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-6783) published on page 13183 of the issue for Thursday, March 21, 2002.

Under the Federal Reserve Bank of Kansas City heading, the entry for Country Square Bancshares, Inc., Meriden, Kansas, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Countryside Square Bancshares, Inc., Meriden, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The State Bank of Meriden, Meriden, Kansas.

Comments on this application must be received by April 15, 2002.

Board of Governors of the Federal Reserve System, March 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7552 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Peoples Bancorp, Rock Valley, Iowa; to become a bank holding company by acquiring 100 percent of Peoples Bank, Rock Valley, Iowa.

Applicant also has applied to retain Peoples Financial Inc., Rock Valley, Iowa, and thereby engage in insurance activities in a place less than 5,000, pursuant to Section 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, March 26, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7705 Filed 3–28–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

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

Proposed Project 1. Voluntary Survey to Assess the Implementation of the Federal Grant Streamlining Program under Public Law 106–107—NEW—The Department of Health and Human Services, as the lead agency in the implementation of the Federal Financial Assistance Management Improvement Act of 1999, will conduct a study for gauging the overall performance of the Federal government in meeting the standards for the streamlined grants process. This survey will be used to improve the efficiency, quality, and timeliness of the grants awarding process, as well as to strengthen its partnership with the grantee community. Respondents: State, Local or Tribal Government, Business or other for-profit, non-profit Institutions—

Reporting Burden Information—Number of Respondents: 13,000; Frequency of Response: once every two years; Average Burden per Response: 15 minutes; Total Burden 3,250 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov,* or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Comments should be received within 60 days of this notice.

Dated: March 21, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–7556 Filed 3–28–02; 8:45 am]

BILLING CODE 4151–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Emergency Awards for Healthcare Under Section 319 of the PHS Act Grants for Immediate Response

AGENCY: Department of Health and Human Services.

ACTION: Notice of availability of funds.

SUMMARY: The Department of Health and Human Services (HHS) announces the availability of a competitive grant program for the purpose of providing emergency funding for health-related costs incurred by organizations as a result of the terrorist acts that occurred on September 11, 2001.

Name of Grant Program: Grants for Immediate Response.

Program Authorization: Section 319 of the Public Health Service Act, 42 U.S.C. 247d.

Amount of funding available: $140 million. There is no cap on the amount of funding for an applicant.

Eligible Applicants: Public entities, not-for-profit entities, and Medicare and Medicaid enrolled suppliers and institutional providers that incurred healthcare-related costs which were directly attributable to the public health emergency resulting from terrorist acts on September 11, 2001. Examples of applicants that may be eligible for this program include, but are not limited to, hospitals, clinics, faculty practices, mental health providers, blood centers, home health agencies, and ambulance companies.

This program is intended to provide funding to those organizations that were most directly affected in the disaster response efforts. Accordingly, in addition to meeting the organizational requirements described above, an applicant must also provide healthcare services in the following geographic areas:

NY: New York County, Queens County, Kings County, Bronx County, Richmond County, Westchester County, Nassau County.

NJ: Hudson County, Essex County, Bergen County, Union County, Middlesex County.

VA: Fairfax County, Arlington City, Alexandria City.

DC: Washington, D.C.

MD: Montgomery County, Prince George's County.

PA: Somerset County.

The highest priority for funding will be given to the following applicants:

- A healthcare entity that treated the greatest number of patients injured at a terrorist attack site (*i.e.,* World Trade Center; Pentagon; Somerset, PA plane crash site), particularly those entities that provided specialized services such as burn care and severe trauma care.
- A healthcare entity that is located closest to an attack site and/or where traffic disruptions and road/tunnel/bridge closings restricted patient access to the facility or services.

Applicants with multiple sites or operating divisions that are part of one corporation must submit one consolidated application for the entire corporate entity; however, a separate analysis must be provided for each site where losses are claimed. Applicants that are subsidiary corporations of a parent organization or system should only include information and data for their specific corporation. For systems with multiple corporate subsidiaries each corporate entity that requests grant support must file a separate application. This program is intended to cover the net losses to a corporation as a result of the September 11 terrorist acts; therefore, for a multi-site applicant, any losses at one site must be reduced by any gains at another site.

Applicants that submitted applications for the first round of funding ($35 million) under the Grants for Immediate Response program, but who were deemed ineligible or did not receive the full funding for which they were deemed eligible, must submit all information outlined in this notice, and must meet all requirements in this notice, in order to receive consideration for funding under this program.

Faith-based and community organizations that provide healthcare services, meet the above criteria and have incurred allowable costs are eligible to receive funding from this program. Individuals are not eligible for funding under this program.

Allowable costs: Healthcare-related costs incurred by an eligible applicant as a result of the terrorist acts on September 11, 2001. Requests can include costs incurred between September 11, 2001 and December 31, 2001. ''Healthcare-related costs'' is defined as increased expenses or lost revenues related to the provision of patient care.

Personnel costs, supplies, and contractual expenses for health care services are examples of allowable expenses. Lost or foregone revenues incurred during the period from September 11, 2001 through December 31, 2001, will also be considered eligible costs for the purposes of this program. All eligible costs must directly relate to the provision of health care.

Allowable costs are costs for which payment and/or reimbursement has not been (and is not expected to be) received and/or the applicant is not eligible for reimbursement. This program will cover only direct costs (*i.e.,* costs that can be specifically identified with a particular project or program).

Costs for which funding is awarded will be subject to verification and validation, including audits by the Office of the Inspector General, after grants are awarded. The grants are also subject to the general provisions applicable to Federal grants awarded by the Department of Health and Human Services (*see* 45 CFR parts 74 and 92), including applicable cost principles incorporated by those regulations. For profit organizations should pay particular attention to 45 CFR 74.81, which requires that no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization.

Unallowable costs: Unallowable costs include, but are not limited to, the following:

- Costs that are eligible for reimbursement or payment from any other sources (including FEMA funding for crisis counseling, emergency protective measures and damaged buildings, equipment, and vehicles)
- Research activities
- Legal costs
- Political and lobbying activities
- Subgrants to other organizations
- Purchase of real property
- Indirect costs and overhead
- Expenses intended to prepare for future similar events
- Increased expenses or lost revenues unrelated to the provision of healthcare
- Costs related to the start-up of new services

Applicant submission: All applications must be submitted to the following addresses:

1. HRSA Grants Application Center (Original Copy), 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879.
2. Division of Facilities Compliance and Recovery (Duplicate Copy), Room 10C–16, 5600 Fishers Lane, Rockville, MD 20857.

Applications must be postmarked by May 13, 2002, and must be received in time for submission to the Objective Review Committee. A legibly dated receipt from a commercial carrier or the U.S. Post Office will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. The submission of application spreadsheets, which must be done on disk or electronically, must comply with the above due date.

Application requirements: All of the information enumerated in items 1 through 9 below must be submitted in the application. All information must be submitted on standard size paper (8.5″ × 11″). Information must be submitted in the same order as presented below. Failure to address all information in each item may result in an applicant being deemed ineligible or receiving a reduced level of funding.

These application requirements include the submission of four spreadsheets. These spreadsheets must be submitted electronically or on disk, as well as by hard copy with the rest of the application. Further information on the spreadsheets and submission requirements is provided in item 9 below. Failure to adequately complete each set of spreadsheets may result in reduced or denied funding. Spreadsheets can be downloaded from the following Web site: *http://www.hrsa.gov/osp/gir2.htm.*

1. Standard Form 424 with attached assurances and certifications. The CFDA # for this program is 93.003. This form and attachments can be downloaded from the following Web site: *http://www.hrsa.gov/osp/gir2.htm.* Additionally, you may call Mr. Eulas Dortch at 301 443–8007 if you would like these forms mailed to you.

2. Narrative information. Information in this section may not exceed 6 pages. Any narrative information in excess of 6 pages may not be considered in the review of an application. Applicants with multiple sites must provide the narrative information broken out for each site (each site is allowed 6 pages of narrative).

a. Summary narrative of actions taken by the applicant in providing patient care services, or preparing to provide patient services, to victims of the World Trade Center, Pentagon, or Somerset, PA terrorist acts. Describe actions taken, and number of patients from the attack zones treated, and types of patient care provided. Information included in this section must reconcile with data contained in Spreadsheet(s) #1—Response Efforts and Access Restrictions.

b. Summary narrative of impediments resulting from the terrorist attacks, including traffic restrictions that prevented patients from accessing/utilizing your facility/service. Indicate your facility's location in relation to the traffic restrictions. Indicate what travel restrictions were imposed, the time period during which travel restrictions were in place, the area covered, and the extent to which patients and/or emergency vehicles could not access your facility or services. Provide an estimate of the total patients (inpatient and outpatient) that were unable to access your facility because of these restrictions, beginning September 11, 2001. Information included in this section must reconcile with data contained in Spreadsheet(s) #1—Response Efforts and Access Restrictions.

c. Summary narrative of total financial impact on healthcare services of the applicant directly attributable to the terrorist attacks had from September 11, 2001, through December 31, 2001. This should only address those services that provide or directly support healthcare services of the applicant. If the applicant provides services not directly related to the provision or support of healthcare services, those costs should be excluded from this application. Provide an estimate of the lost patient revenues and explain the methodology used in estimating the lost revenues. Provide an estimate of increased expenses and identify those activities that required additional expenses. Information included in this section must reconcile with data contained in Spreadsheet(s) #2—Breakdown of Lost Revenues and Increased Expenses.

d. Itemization and justification for all increased expenses and lost revenues described in 2c above. Funding can be sought for a combination of lost revenues and increased expenses; in such cases clearly delineate the amount attributable to lost revenue and the amount attributable to increased expenses. Increased expenses should be clearly itemized to show how each component of these costs was determined and calculated. The itemization of increased expenses must clearly identify and offset any additional revenues received due to the increased expenses. Lost revenues should be separately shown and also must be clearly itemized to show how each component of these costs was determined and calculated. The itemization of lost revenues must clearly identify and offset any reduced expenses related to lost revenues. All assumptions should be clearly identified and the basis for assumptions explained. Funds previously received under HRSA's Grants for Immediate Response program or any other funding relief must be clearly identified and it must be clear that eligible costs that were funded with any such grant award are not being duplicated in this request. Information included in this section must reconcile with data contained in Spreadsheet(s) #2—Breakdown of Lost Revenues and Increased Expenses.

e. Compare the operating results shown in the income statement for the 4-month period from September 2001 through December 2001 with the same period for 2000. In order to normalize the information being compared, identify all retroactive rate settlements (positive and negative), one-time transactions, and any other information that distorts the comparison and which occurred in either 2000 or 2001. Explain how these transactions impact the comparative analysis and make adjustments accordingly. The summary impact of all such transactions must be clearly identified on Spreadsheet #3 and narrative information must clearly document each transaction. Provide an explanation if the 4-month period during 2001 does not have a negative variance (as compared to the same 4-month period in 2000) equal to or greater than the increased expenses and decreased revenues for which grant funding is sought. This analysis must reconcile with data contained in Spreadsheet(s) #3—Breakout of Income and Expenses. Funding determinations will in part be based on an assessment of the negative variance (for the overall organization) in operating performance for September 2001 through December 2001 as compared to the same period during 2000.

f. If there is not a clear and direct link between any of the identified costs and the terrorist acts, provide an explanation of the relationship.

3. Identify the location where the services for which funding is sought were provided. Identify the closest intersection to the site where the applicant provides patient services. Include a map marking such location along with a legend showing relative distance and any travel restrictions noted in section 2b above. If funding for multiple sites is sought, note the location of each site.

4. List all sites where the applicant provides healthcare services, including sites for which losses are not requested in this application. For each site where losses have not been documented as part of this grant application, provide summary financial information explaining how those sites performed during the period from September 2001 through December 2001, in relation to performance during the same period in 2000.

5. From the internal financial statements of the applicant, a copy of the Income Statement/Comparative Statement of Operations for the entire corporation/organization along with all schedules showing operating statistics (inpatient and outpatient) and staffing/FTE information for each of the following periods. These statements and schedules should be included in the internal financial statements of the applicant and are to be submitted separate from, and in addition to, all spreadsheets required in item 2 above; however, information shown in the spreadsheets must reconcile to these statements and schedules. These statements and schedules shall be certified as true and accurate by the Chief Financial Officer of the applicant.

- Year-to-date for the 8 months ending August 31, 2000
- Year-to-date for the 8 months ending August 31, 2001
- Year-to-date for the 12 months ending December 31, 2000
- Year-to-date for the 12 months ending December 31, 2001

6. IRS confirmation of public or not-for profit status, or evidence of status as Medicare or Medicaid enrolled supplier or institutional provider.

7. Listing of any additional Federal, State, or private agencies or organizations and/or any insurance company from which funding relief and/or insurance (including business loss insurance) has been sought in relation to the September 11, 2001, terrorist acts (*e.g.*, HRSA, FEMA, Red Cross). Include amount of funding requested and description/explanation of basis for any such request, and the outcome or pending status of each request. Any funding that has been received must be clearly identified in your budget itemization and justification included in the narrative and shall be offset against any eligible losses to avoid duplicative funding. Identify and segregate any funding being sought for mental health services and explain why funding is not available from the $22 million provided by FEMA for crisis counseling.

8. Statement/assurance from an authorized representative of the applicant that:

a. Expenses/lost revenues for which grant funding is sought are not eligible for reimbursement and/or payment from Medicare, Medicaid, FEMA;

b. Reimbursement and/or payment will not be sought from Medicare, Medicaid, or FEMA for any expenses/lost revenues covered by the grant;

c. Grant funds will not be used to supplant any Federal or non-Federal funds that are received for the activities or purposes for which funding is sought; and

d. If the applicant has sought funding from another source for the same expenses and/or lost revenues and is uncertain as to whether such request(s) will be approved, it must include an assurance that if that funding is received, funding from this program will be returned.

9. Application Spreadsheets. Four spreadsheets are described below. Spreadsheets should be downloaded from the following Web site: *http://www.hrsa.gov/osp/gir2.htm.*

Do not change the format or add any additional rows or columns to the spreadsheets. All of the spreadsheets must be completed by all applicants. If any of the information requested on a spreadsheet is not readily available, then reasonable efforts will be made to develop and/or obtain the information. Be sure to submit spreadsheets for all components of a corporation/organization as specified below. Spreadsheets can be found at the following website. These spreadsheets must be submitted electronically or by disk, in accordance with the specific instructions in this section. Electronic submissions should be sent to the following e-mail address: *gir2@hrsa.gov.* In the subject line identify the applicant name and Employee Identification Number. If submitting the information by disk, it must be sent to the following address: Mr. Eulas Dortch, HRSA/OSP/DFCR, 5600 Fishers Lane, Room 10C–16, Rockville, MD 20857.

Disks and/or electronic submission of application spreadsheets are subject to the same due dates as the application. Additionally, a hard copy of all spreadsheets must be included with each application. Each hard copy spreadsheet must be signed by the Chief Financial Officer, attesting to the accuracy of the information.

a. *Spreadsheet #1*—Response Efforts and Access Restrictions. A separate spreadsheet must be completed for each site where losses are claimed. Additionally, a consolidated spreadsheet must be completed for the entire corporation/organization.

b. *Spreadsheet #2*—Breakdown of Lost Revenues and Increased Expenses. A separate spreadsheet must be completed for each site where losses are claimed. Additionally, a consolidated spreadsheet must be completed for the entire corporation/organization. The consolidated spreadsheet may not exceed the sum of the losses at individual sites. The maximum amount an applicant will be eligible to receive shall not exceed the losses documented in these spreadsheets.

c. *Spreadsheet #3*—Breakout of Income and Expenses. A separate spreadsheet must be completed for each site where the applicant provides healthcare services. Additionally, a consolidated spreadsheet must be completed for the entire corporation/organization.

d. *Spreadsheet #4*—Operating Statistics and Staffing Information. A separate spreadsheet must be completed for each site where the applicant provides healthcare services. Additionally, a consolidated spreadsheet must be completed for the entire corporation/organization.

Review Criteria: 1. Demonstration that the services provided, expenses incurred, and/or lost revenues for which the grant is sought are attributable to terrorist acts on September 11, 2001.

2. Soundness of the narrative.

3. Reasonableness and clarity of budget justification, particularly the methodology and calculations.

4. Consistency of documented costs with the negative financial impact shown in the financial statements.

5. Demonstration of most direct participation in the response efforts as evidenced by any of the following:

a. Proximity to the attack zone.

b. Number of patients from the attack zone served by the applicant.

c. Provision of specialized services to patients from the attack zone by the applicant.

Program Contact Person: Mr. Eulas Dortch , Director, Division of Facilities Compliance and Recovery, HRSA Office of Special Programs, Room 10C–16, 5600 Fishers Lane, Rockville, MD 20857, 301 443–8007 (phone), 301 443–0619 (fax), *edortch@hrsa.gov* (e-mail).

Dated: March 26, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–7739 Filed 3–28–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0054]

Agency Information Collection Activities; Proposed Collection; Comment Request; Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of February 28, 2002 (67 FR 9297). The document announced an opportunity for public comment on the proposed collection of certain information by the agency; specifically, comments on requirements relating to the approval and labeling of color additives.

FOR FURTHER INFORMATION CONTACT: Doris Tucker, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–4859, appearing on page 9297 in the **Federal Register** of Thursday, February 28, 2002, the following correction is made:

1. On page 9297, in the third column, under **SUPPLEMENTARY INFORMATION**, the OMB control number ''0910–01850'' is corrected to read ''0910–0185''.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7525 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0104]

Agency Information Collection Activities; Proposed Collection; Comment Request; Consumer Handling of Ready-to-Eat Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection that will occur during research to determine how consumers handle ready-to-eat (RTE) food products and how consumer practices impact the microbiological safety of RTE foods.

DATES: Submit written or electronic comments on the collection of information by May 28, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Consumer Handling of Ready-to-Eat Foods

Section 402 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342) authorizes FDA to regulate foods so that they are not adulterated. FDA's research in food safety seeks to reduce the incidence of foodborne illness by improving the ability to find new ways to detect, enumerate, and control pathogens in the food supply. FDA's Center for Food Safety and Applied Nutrition (CFSAN) awarded two grants of research funds in September 2001 to support research into consumer refrigeration practices and shelf-life for RTE foods entitled ''Consumer Storage Length Practices for Ready-to-Eat Foods'' and ''Consumer Handling of Ready-to-Eat Foods After Purchase.''

The information that will be collected concerns consumer handling of RTE food products. The research will provide data on the storage of RTE foods in unopened and opened packages in home refrigerators; consumer understanding of expiration dates; and consumer use of this information in making decisions regarding purchases, consumption, and home storage conditions. The data from these surveys will be used to refine the Department of Health and Human Services and United States Department of Agriculture *Listeria monocytogenes* (LM) risk assessment, issued in draft for public comment on January 19, 2001 (66 FR 5515). The values used for home storage of foods in the draft LM risk assessment were largely based on expert opinion, not statistically supportable data. Thus, the consumer storage data from these two grants will improve FDA's confidence in the predicted risks by reducing the uncertainty in consumer practices.

For the ''Consumer Storage Length Practices for Ready-to-Eat Foods,'' approximately 2,400 respondents will be selected from an already existing nationally representative web-enabled panel. For ''Consumer Handling of Ready-to-Eat Foods After Purchase,'' a more traditional survey approach will be used and will be conducted in three parts. In part 1, approximately 400 in-person interviews will be conducted in Tennessee, Illinois, Kansas, Missouri, Florida, and New York. Participants will

be selected to represent both sexes, different income groups and education levels, and a wide range of adults from different ethnic groups. In part 2, 100 respondents from part 1 will complete food diaries of specific foods from the day the food dairy is initiated until those foods are consumed or discarded. In part 3, two mass mailings of questionnaires will be conducted one in fall-winter and the second in spring-summer for a total of 2,000 respondents.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Web-enabled panel survey	2,400	1	2,400	0.25	600
Interview survey	400	1	400	0.5	200
Food diary	100	1	100	0.5	50
Mail survey	2,000	1	2,000	0.3	600
Total					1,450

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents given in table 1 is based on the study design in the two grant applications. The hours per response was estimated based on experience of the grantees for similar surveys and also on the number of questions to be included in each survey instrument.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7580 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0301]

Agency Information Collection Activities; Announcement of OMB Approval; Customer/Partner Service Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Customer/Partner Service Surveys'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Inthe **Federal Register** of December 20, 2001 (66 FR 65723), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0360. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7524 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0402]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices; Third-Party Premarket Submission Review and Quality System Inspections Under United States/European Community Mutual Recognition Agreement'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 2002 (67 FR 1770), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0378. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7526 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Manufacturing Inspections; Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

The Food and Drug Administration (FDA) is announcing a series of workshops to discuss the application of a systems-based approach to drug manufacturing inspections. The workshops, which will be held in collaboration with the Consumer Healthcare Products Association (CHPA), are intended to provide a regulatory perspective on the systems-based approach to inspections.

Date and Time: See table 1 following the ''Location'' section of this document.

Location: See table 1 below

TABLE1

Meeting Address	Date and Local Time	FDA Contact Person
NEW JERSEY: Sheraton Meadowlands Hotel, 2 Meadowlands Plaza, East Rutherford, NJ, 201–896–0500.	Monday, June 17, 2002, from 8:30 a.m. to 4:30 p.m.	Erik N. Henrikson
PUERTO RICO: San Juan Marriott Hotel, 1309 Ashford Ave., San Juan, PR, 800–981–8546.	Monday, July 15, 2002, from 8:30 a.m. to 4:30 p.m.	Do.
CALIFORNIA: Manhattan Beach Marriott Hotel, 1400 Parkview Dr., Manhattan Beach, CA, 310–546–7511.	Monday, August 5, 2002, from 8:30 a.m. to 4:30 p.m.	Do.

Contact:

For information regarding participation by FDA: Erik N. Henrikson, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–827–0072, FAX 301–594–2202.

For information regarding the program or registration: Bill Bradley, Consumer Healthcare Products Association (CHPA), 1150 Connecticut Ave. NW., Washington, DC 20036, 202–429–9260, FAX 202–223–6835.

Registration: Anyone interested in the workshops can obtain registration information from Bill Bradley, CHPA (address above), or a brochure with the program and registration form is available at http://www.chpa-info.org/meetings/pdfs/2002workshops_updated_22602.pdf. This material is also available from http://www.fda.gov.cder/calendar. Space is limited. Please preregister by the Friday prior to each of these meetings to confirm your participation. If you need special accommodations due to a disability, please contact Erik N. Henrikson (address above) at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

Who Should Attend? This announcement is directed toward professionals involved in the manufacture, control, and regulation of prescription or over-the-counter drugs who will benefit from these workshops, including: Process/production engineers, quality assurance/quality control and regulatory affairs professionals, auditors, repackers and relabelers, consultants, regulatory investigators and good manufacturing practice compliance officials, and reviewing chemists. Other entities or individuals may also be interested in attending.

Is There a Registration Fee for This Workshop? Yes, a registration fee of $320.00 payable to CHPA is required for this workshop. This registration fee includes workshop reference materials and lunch on each day. Government employees qualify for a discounted rate of $75.00.

How Can I Get Additional Information, Including Copies of This Document or Other Related Documents? The notice of participation form, information about the workshops, and other related documents are available from the information contacts (addresses above) or on the Internet at http://www.fda.gov.cder/calender.

Dated: March 22, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7579 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA Food Labeling and Allergen Declaration; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs Southwest Regional Small Business Program (Small Business Program), in collaboration with FDA's Center for Food Safety and Applied Nutrition and the Mid-Continental Association of Food and Drug Officials is announcing a public workshop entitled ''FDA Food Labeling and Allergen Declaration.'' This public workshop is intended to provide information about FDA food labeling regulations, allergen declaration and other related matters to the regulated industry, particularly small businesses and startups.

Date and Time: The public workshop will be held on August 14 and 15, 2002, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Center for Community Cooperation, Oak Corner Room, 2900 Live Oak St., Dallas, TX 75204.

Contact: David Arvelo or Sue Thomason, Southwest Regional Office (HFR–SW16), Food and Drug Administration, 7920 Elmbrook Dr., suite 102, Dallas, TX 75247, 214–655–8100, ext. 130 or 128, FAX 214–655–8114, or e-mail: oraswrsbr@ora.fda.gov.

Registration: Pre-registration by July 31, 2002, is encouraged. The Mid-Continental Association of Food and Drug Officials has a $25 pre-registration fee to cover the cost of breaks. To pre-register, please complete the form below and send along with a check or money order for $25 payable to the Mid-Continental Association of Food and Drug Officials, 7920 Elmbrook Dr., suite 102, Dallas, TX 75247. As an alternative, the registration form can also be obtained on the Internet at http://www.fda.gov/ora/indust_assit/Default.htm. Directions to the facility are available at the Center for Community Cooperation Web site at http://www.cccdfw.org/pages/location.html. Seats are limited, please submit the registration form as soon as possible. Space will be filled in order of receipt of registration. Those accepted into the public workshop will receive written confirmation. Registration will close after the workshop is filled. Onsite registration will be done on a space-available basis on the day of the public workshop beginning at 8 a.m. The cost of onsite registration is $35 payable to the Mid-Continental Association of Food and Drug Officials. If you need special accommodations due to a disability, please contact David Arvelo or Sue Thomason at least 7 days in advance.

The following information is requested for registration:

Name: _____

Agency: _____

Mailing address: _____

_____

City: _____ State:_____

Zip code: _____

Phone: ( ) _____

FAX: ( ) _____

E-mail: _____

SUPPLEMENTARY INFORMATION: The workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers

and startups originating from the Dallas District area. The Small Business Program presents this workshop to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the Small Business Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by government agencies to small businesses.

The goal of the workshop is to present information that will enable manufacturers and regulated industry to better comply with labeling requirements, especially in light of growing concerns about food allergens. Information presented will be based on agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Mandatory label elements, (2) nutrition labeling, (3) claims, (4) allergen policy, and (5) labeling of special cases. FDA expects that participation in this workshop will provide regulated industry with greater understanding of the regulatory and policy perspectives on food labeling and allergen declaration.

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Workshop handouts may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

Dated: March 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7583 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0314]

"Guidance for Industry: Providing Regulatory Submissions to CBER in Electronic Format—Investigational New Drug Applications (INDs);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Providing Regulatory Submissions to CBER in Electronic Format—Investigational New Drug Applications (INDs)" dated March 2002. The document is intended to provide guidance to sponsors on the design, development, organization, and submission in electronic format of an IND to the Center for Biologics Evaluation and Research (CBER). This guidance finalizes the draft guidance that was announced in the **Federal Register** on June 1, 1998 (63 FR 29741).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Providing Regulatory Submissions to CBER in Electronic Format—Investigational New Drug Applications (INDs)" dated March 2002. The agency has developed this guidance to assist sponsors on the design, development, organization, and submission in electronic format of INDs to CBER. The guidance announced in this notice finalizes the draft "Guidance for Industry: Pilot Program for Electronic Investigational New Drug (eIND) Applications for Biological Products" dated May 1998 (63 FR 29741, June 1, 1998).

This document reflects CBER's experience with the electronic IND pilot program and incorporates knowledge gained from development of the electronic marketing applications guidance document entitled "Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format—Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA)/Establishment License Application (ELA) and New Drug Applications (NDA)]" November 12, 1999 (64 FR 61647), revised. The agency also incorporated suggestions and recommendations from sponsors in developing a table of contents driven navigational system. However, this guidance does not address the scientific, clinical, and regulatory requirements for preparing an IND submission. These requirements can be found in title 21 of the Code of Federal Regulations, part 312 (21 CFR part 312). Part 312 must be followed in the preparation of any IND.

FDA currently is working on electronic submissions in the Common Technical Document (CTD) format developed by the International Conference on Harmonization (ICH). As FDA develops guidance on electronic CTD submissions, CBER intends to harmonize this guidance with the CTD guidance. This guidance describes how sponsors may submit electronic INDs to CBER. Sponsors may continue to submit INDs in paper form.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement

of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: March 13, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7581 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0103]

Draft Revised Compliance Policy Guide; Male Condom Defects; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revised compliance policy guide (CPG) entitled ''Male Condom Defects (CPG 7124.21).'' This draft CPG provides guidance concerning FDA's water leak testing and air burst testing of male condoms. This draft guidance is being issued for public comment only and will not be implemented until a final CPG is announced in the **Federal Register**.

DATES: Submit written or electronic comments on the draft by June 27, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft CPG, current CPG, and Laboratory Information Bulletin (LIB) No. 4176 to the Division of Small Manufacturers, International and Consumer Assistance (DSMICA), Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850 (301–443–6597 or outside MD 1–800–638–2041). Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft CPG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to these documents.

FOR FURTHER INFORMATION CONTACT: John J. Farnham, Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4618, ext. 117.

SUPPLEMENTARY INFORMATION:

I. Background

The draft CPG entitled ''Male Condom Defects (CGP 7124.21)'' is revising CPG 7124.21 that is currently entitled ''Condoms; Defects—Criteria for Direct Reference Seizure.'' The title of this CPG was changed in the draft document; however, the CPG number remains the same.

The purpose of this draft CPG is to provide guidance to FDA personnel concerning FDA's water leak testing of both latex and synthetic male condoms as well as air burst testing of latex male condoms.

In accordance with section 514(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d(c)), as amended by the FDA Modernization Act of 1997, the agency now recognizes some voluntary industrial standards for purposes of meeting the act's requirements. For latex male condoms, FDA has recognized, in part, two standards: (1) American Society for Testing and Materials' Standard Specification for Rubber Contraceptives (Male Condoms)–ASTM D3492–97 and (2) International Organization for Standardization's Rubber Condoms Standard–ISO 4074–1.

Several important changes were included in this draft revised CPG to conform to these two standards. For water leak testing, the acceptable quality level was lowered from 0.4 to 0.25 in conformance with the two referenced standards. Regulatory guidance and sampling plans were included for FDA's air burst testing for the first time. FDA is concerned about the ability of latex condoms to resist breakage and has implemented air burst testing as a measure of elasticity and strength. A ''lot'' definition for FDA sampling and more specific guidance on sampling and analyses were also added to the revised draft CPG.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on male condom defect regulatory guidance and test and sampling methods. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations. In accordance with FDA's good guidance practices (21 CFR 10.115), this draft CPG is considered level 1 guidance. This draft guidance document is being issued for public comment only and is not in effect at this time. Only after a notice of availability is published in the **Federal Register** for the final CPG will the agency implement the revised policy.

III. Electronic Access

Copies of the draft CPG and current CPG may be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs' home page includes these documents and may be accessed at http://www.fda.gov/ora. The referenced documents will be available on the Compliance References page.

Facsimiles of the draft CPG, current CPG, and LIB 4176 are available from DSMICA. To receive the referenced documents on your FAX machine, call the CDRH Facts-On-Demand (FOD) system at 1–800–899–0381 or 301–827–0111 from a touch tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document numbers 39 (current CPG), 1399 (draft CPG) and 1400 (LIB 4176) followed by the pound sign (#). Follow the remaining voice prompts to complete the request.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on this draft CPG by June 27, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The agency will review all comments, but in issuing a final CPG, need not specifically address each comment. If appropriate, the agency will make changes to the CPG in response to comments. Copies of the draft CPG,

current CPG, LIB 4176, and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 21, 2002.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 02–7582 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463), announcement is made of the following National Advisory Committee scheduled to meet during the month of April 2002.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: April 29, 2002; 8:00 a.m.—5:00 p.m., April 30, 2002; 8:00 a.m.—4:00 p.m.

Place: The Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

Agenda items will include, but not be limited to: Welcome; plenary discussion of interdisciplinary demonstration projects and promotion of interdisciplinary teams; workforce issues linked to regional and local need; collaboration with institutions that train minority and immigrant health care professionals in rural and inner city areas; presentations by speakers representing: the Bureau of Health Professions (BHPr), Health Resources and Services Administration; Committee members; the Division of State, Community and Public Health, BHPr; and BHPr staff supporting Committee activities. Meeting content will be based on the Committee's charge under section 756 of the Public Health Service Act, to include discussion and outline of the 2002 Committee report and scheduling of topics for the next Committee meeting in June 2002.

Public comment will be permitted before lunch and at the end of the Committee meeting on April 30, 2002. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Mrs. Tempie R. Desai, Principal Staff Liaison, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0132.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but wish to make an oral statement may register to do so at the Doubletree Hotel, Rockville, Maryland, on April 29, 2002. These persons will be allocated time as the Committee meeting agenda permits.

Anyone requiring information regarding the Committee should contact Mrs. Desai, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0132.

Proposed agenda items are subject to change as priorities dictate.

Dated: March 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–7584 Filed 3–28–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 2002:

Name: National Advisory Council on Migrant Health.

Date and Time: May 1, 2002; 9 a.m. to 5 p.m.; May 2, 2002; 9 a.m. to 5 p.m.

Place: Hyatt Regency Indianapolis, 1 South Capitol Avenue, Indianapolis, Indiana. Phone: (317)632–1234; Fax (317)616–6299.

The meeting is open to the public.

Agenda: The agenda includes an overview of general Council business activities and priorities. Topics to be addressed will include dissemination of the Migrant Health Issues Monograph Series and finalizing the 2002 Recommendations and background statements. In addition, the Council will be discussing workforce needs in the expansion of migrant health centers. Finally, the Council will attend the National Association of Community Health Centers' 2002 National Farmworker Health Conference, which is also being held in Indianapolis at this time.

Agenda items are subject to change as priorities indicate.

Contact: Anyone requiring information regarding the subject Council should contact Margaret Davis, staff support to the National Advisory Council on Migrant Health, Migrant Health Program, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–0291.

Dated: March 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–7585 Filed 3–28–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2002

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)) and section 601 of the Indian Health Care Improvement Act (25 U.S.C. 1601), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2002 for Medicare and Medicaid Beneficiaries and Beneficiaries of other Federal Agencies. Since the inpatient rates set forth below do not include physician services, IHS facilities may also be entitled to bill State Medicaid programs for physician services to the extent that those services meet applicable requirements under an approved State Medicaid plan.

	Calendar year 2002
Inpatient Hospital Per Diem Rate (Excludes Physician Services)	
Lower 48 States	$1,507
Alaska	1,967
Outpatient Per Visit Rate (Excluding Medicare)	
Lower 48 States	$197
Alaska	374
Outpatient Per Visit Rate (Medicare)	
Lower 48 States	$160
Alaska	364
Medicare Part B Inpatient Ancillary Per Diem Rate	
Lower 48 States	$287

	Calendar year 2002
Alaska	687
Outpatient Surgery Rate (Medicare)	
Established Medicare rates for freestanding Ambulatory Surgery Centers.	

Effective Date for Calendar Year 2002 Rates

Consistent with previous annual rate revisions, the Calendar Year 2002 rates will be effective for services provided on/or after January 1, 2002 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Regulatory Impact

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all cost and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is not a major rule because we have determined that the economic impact will be negligible.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This rule will not have a significant economic effect on these governments or the private sector.

The Department has determined that this notice does not have a substantial effect on States or local governments under Executive Order 13132 and will not interfere with the roles, rights and responsibilities of States or local governments.

We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the provisions of Executive Order l2866, this notice was reviewed by the Office of Management and Budget.

Dated: January 28, 2002.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. 02–7723 Filed 3–28–02; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Title 181.

Date: April 18–19, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397; Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control National Institutes of Health, HSS)

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7615 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: April 10, 2002..

Time: 10 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheryl K. Brining, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Center, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, 301–435–0809, *brinings@ncrr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7621 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, March 26, 2002, 8:30 AM to March 26, 2002, 5 PM, Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on February 22, 2002, 67 FR 8277.

The meeting will be held on April 3, 2002, Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland. The time of the meeting remains the same. The meeting is closed to the public.

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7613 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Equipment Supplements.

Date: April 15–16, 2002.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7616 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Services; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 9–10, 2002.

Closed: May 9, 2002, 8:30 AM to 10:30 AM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: May 9, 2002, 10:30 AM to 5:00 PM.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of Council.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: May 10, 2002, 8:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Norka Ruiz Bravo, Phd, Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 594–4499.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-governmental employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: pub.nigms.nih.gov/council/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7617 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance to space available. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 21–22, 2002.

Closed: May 21, 2002, 3 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Bldg. 31, C-Wing, Conference Room 6, Bethesda, MD 20892.

Open: May 22, 2002, 8 AM to 1:15 PM.

Agenda: Call to Order; Geriatrics Program Review Report; Task Force on Minority Aging Research Report; Working Group on Program and Clinical Investigators Working Group Reports.

Place: National Institutes of Health, 9000 Rockville Pike, Bldg. 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7618 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: May 15, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7619 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–65, Review of R44 Grants.

Date: April 23, 2002.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–50, Review of R01 Grants.

Date: April 25, 2002.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna Sandberg MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–62, Review of R44 Grants.

Date: April 30, 2002.

Time: 10 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN-44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121 Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7620 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: May 30, 2002.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601. 301–435–3732.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7622 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Global Impact of Respiratory RNA Viruses on Cellular Pathways.

Date: April 16, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700-B Rockledge Drive, Room 2103, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700-B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. (301) 496–2550. *ar15o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7623 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Review of Clinical Trials.

Date: April 10, 2002.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 750, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798. *muston@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK01–026; Functional Atlas of Orphan Nuclear Receptors.

Date: April 23, 2002.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892. (301) 594–8898.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Growth Hormone.

Date: April 30, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Suite 755, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carolyn Miles, PhD, Scientific Research Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. P01 Group 1. Development and Cell Biology of Epithelium.

Date: May 1, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Suites Bethesda, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition

Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7624 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 28, 2002.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608. 301–443–1606. *Mcary@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 29, 2002.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608. 301–443–1606.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7625 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 7–8, 2002.

Time: 7:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 10, 2002.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard By Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203.

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892. (301) 594–8886.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 15, 2002.

Time: 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 746, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 746, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892. 301–594–7637. *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7626 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren G. Magnuson Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, March 22, 2002 9 AM to March 22, 2002 1 PM, National Institutes of Health, Clinical Center, Medical Board Room 2C116, 9000 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on March 7, 2002, 67 FR 10429.

The meeting will be closed from 10:30 AM to 1 PM to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of the information and the discussions would be likely to significantly frustrate implementation of any proposed agency action.

Dated: March 21, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7614 Filed 3–28–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–09]

Notice of Proposed Information Collection: Comment Request; Informed Consumer Choice Disclosure Notice

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* May 28, 2002.

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.

This Notice also lists the following information:

Title of Proposal: Informed Consumer Choice Disclosure Notice.

OMB Control Number, if applicable: 2502–0537.

Description of the need for the information and proposed rule: Under section 225(a) of the Departments of Veterans Affairs and Housing and Urban Development, and the Independent Agencies Appropriations Act of 1999, amended section 203(b)(2) to the National Housing Act states that lenders are required to disclose certain information to a prospective borrower who seeks a FHA-insured home mortgage. The lender is required to provide the borrower with a comparison of costs—the costs for the FHA-insured mortgage compared to the costs for other similar conventional mortgage products the lender provides and for which the borrower is qualified. The disclosure notice should also provide information about when the borrower's requirements to pay FHA mortgage insurance premiums would terminate.

Agency form number, if applicable: None.

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 hours needed to prepare the information collection is 4,500, the number of respondents is estimated to be 9,000 generating approximately 9,000 responses annually, the response is on occasion, and the amount of time needed per response is approximately 30 minutes.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 21, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–7546 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4740–N–02]

Notice of Proposed Information Collection: Comment Request Quarterly Loan Level Reporting

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), 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:* May 28, 2002.

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:

Sonya Suarez, Office of Program Operations, Department of Housing & Urban Development, 451—7th Street, SW., Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit 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).

The 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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the 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 through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Quarterly Loan Level Reporting.

OMB Control Number, if applicable: 2503–0026.

Description of the need for the information and proposed use: Ginnie Mae requires that issuers submit loan level data quarterly for all pools and loan packages. The loans are reported in association with the pools or loan packages of which they are a part. The data is analyzed and reconciled against pool information submitted by issuers. Ginnie Mae needs to collect loan level data from its issuers to continue performing risk analyses, compliance monitoring and cost analyses regarding its Mortgage-Backed Securities programs.

Agency form numbers, if applicable: Not applicable.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Number of respondents: 296 (as of November 2001).
Frequency of responses: 1 per quarter.
Total annual responses: 1,184.
Hours per response: 4.
Total burden hours: 4,736.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 21, 2002.

Ronald A. Rosenfeld,

President, Ginnie Mae.

[FR Doc. 02–7547 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–12]

Notice of Submission of Proposed Information Collection to OMB FHA Fee Inspector Panel Application Package

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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:* April 29, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: FHA Fee Inspector Panel Application Packages.

OMB Approval Number: 2502–XXXX.

Form Numbers: HUD–92563.

Description of the Need for the Information and its Proposed Use: FHA approved inspectors are used by participating mortgage lenders to assess the quality of the construction of homes before the homes can be accepted as security for FHA insured loans.

Respondents: Business or other for-profit, Federal Government.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
3,000		3		0.58		5,250

Total Estimated Burden Hours: 5,250.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 21, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–7545 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–13]

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.

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 21, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–7247 Filed 3–28–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of 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–053207

Applicant: Accipiter Biological Consultants, Portal, Arizona.

Applicant requests permit for recovery purposes to conduct presence/absence surveys for the northern aplomado falcon (*Falco femoralis septentrionalis*) within Cameron County, Texas.

Permit No. TE–053104

Applicant: Athabasca Consulting, Inc., Austin, Texas.

Applicant requests permit for recovery purposes to conduct presence/absence surveys within Texas for the following species: black-capped vireo (*Vireo atricapillus*), golden-cheeked warbler (*Dendroica chrysoparia*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Tooth Cave spider (*Neoleptoneta myopica*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Madla's Cave meshweaver (*Cicurina madla*), Robber Baron Cave meshweaver (*Cicurina baronia*), Bracken Bat Cave meshweaver (*Cicurina venii*), Government Canyon Cave meshweaver (*Cicurina vespera*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Cokendolpher Cave harvestman (*Texella cokendolpheri*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Coffin Cave mold beetle (*Batrisodes texanus*), ground beetle (*Rhadine exilis*), ground beetle (*Rhadine infernalis*), Helotes Mold beetle (*Batrisodes venyivi*), Texas blind salamander (*Typhlomolge rathbuni*), Barton Springs salamander (*Eurycea sosorum*), Houston toad (*Bufo houstonensis*) and Fountain darter (*Etheostoma fonticola*).

Permit No. TE–053085

Applicant: U.S. Bureau of Reclamation, Boulder City, Nevada.

Applicant requests permit for recovery purposes to conduct presence/absence surveys for the Yuma clapper rail (*Rallus longirostris yumanensis*) within Mohave County, Arizona and San Bernardino County, California. In addition, applicant requests permit for recovery purposes to conduct presence/absence surveys and nest monitoring for the southwestern willow flycatcher (*Empidonax traillii extimus*) within La Paz and Clark Counties, Nevada and Mohave and Yuma Counties, Arizona.

Permit No. TE–043399

Applicant: Eagle Environmental Consulting, Owasso, Oklahoma.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the interior least tern (*Sterna antillarum*) within Oklahoma.

Permit No. TE–841353

Applicant: Loomis Austin, Inc., Austin, Texas.

Applicant requests amendment to an existing permit to allow presence/absence surveys within Texas for the following species: interior least tern (*Sterna antillarum*), ocelot (*Leopardus pardalis*) and jaguarundi (*Herpailurus yagouaroundi*).

Permit No. TE–053083

Applicant: Julie Kutz, Albuquerque, New Mexico.

Applicant requests a permit for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

Permit No. TE–053084

Applicant: Derek Green, Austin, Texas.

Applicant requests a permit for recovery purposes to conduct presence/absence surveys within Texas for the following species: golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapillus*), interior least tern (*Sterna antillarum*), red-cockaded woodpecker (*Picoides borealis*), Houston toad (*Bufo houstonensis*), ground beetle (*Rhadine exilis*), ground beetle (*Rhadine infernalis*), Helotes mold beetle (*Batrisodes venyivi*), Cokendolpher Cave harvestman (*Texella cokendolpheri*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla's Cave meshweaver (*Cicurina madla*), Bracken Bat Cave meshweaver (*Cicurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Tooth Cave spider (*Neoleptoneta myopica*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Coffin Cave mold beetle (*Batrisodes texanus*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), northern aplomado falcon (*Falco femoralis septentrionalis*), brown pelican (*Pelecanus occidentalis*) and southwestern willow flycatcher (*Empidonax traillii extimus*).

Permit No. TE–053080

Applicant: Gary Garrett, Ingram, Texas.

Applicant requests permit for recovery purposes to conduct monitoring surveys for the Comanche Springs pupfish (*Cyprinodon elegans*) and Pecos gambusia (*Gambusia nobilis*) within Texas.

Permit No. TE–053109

Applicant: Sally Stefferud, Phoenix, Arizona.

Applicant requests permit for recovery purposes to conduct monitoring surveys for the Gila topminnow (*Poeciliopsis occidentalis*) and desert pupfish (*Cyprinodon macularius*) within Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Pima, Pinal, Santa Cruz and Yavapai Counties of Arizona. Additional activities may include temporary holding and marking in conjunction with authorized recovery projects.

Permit No. TE–025131

Applicant: Dr. Lawrence E. Stevens, Flagstaff, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona.

Permit No. TE–053082

Applicant: U.S.G.S Biological Resources Division, Arizona Cooperative Fish and Wildlife Research Unit, Tucson, Arizona.

Applicant requests permit for research and recovery purposes to conduct presence/absence surveys by electrofishing, capturing and handling the Colorado pikeminnow (*Ptychocheilus lucius*) and razorback sucker (*Xyrauchen texanus*) within central Arizona.

Permit No. TE–052634

Applicant: New Mexico Environmental Department/Surface Water Quality Bureau, Santa Fe, New Mexico.

Applicant requests permit for research and recovery purposes to conduct presence/absence surveys by electrofishing, capturing, handling and collecting voucher specimens within New Mexico for the following species: Pecos gambusia (*Gambusia nobilis*), Rio Grande silvery minnow (*Hybognathus amarus*), Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis occidentalis*) and Gila trout (*Oncorhynchus gilae*).

Permit No. TE–053843

Applicant: Donna Achuff, Orange Grove, Texas.

Applicant requests permit for educational purposes, to house and/or care for captive bred jaguar (*Panthera onca*) and ocelot (*Leopardus (=Felis) pardalis*) within Jim Wells County, Texas for educational purposes.

Permit No. TE–053839

Applicant: Sugnet Environmental, Inc., Durango, Colorado.

Applicant requests permit for research and recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, Colorado, New Mexico and Utah.

Permit No. TE–800611

Applicant: SWCA, Inc., Austin, Texas.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the ocelot (*Leopardus (=Felis) pardalis*) and jaguarundi (*Herpailurus (=Felis) yagouaroundi*) within Texas.

Permit No. TE–839503

Applicant: Entranco, Inc., Phoenix, Arizona.

Applicant requests an amendment to an existing permit to allow presence/absence surveys for the Sonoran pronghorn (*Antilocapra americana sonoriensis*) and brown pelican (*Pelecanus occidentalis*) within Arizona, New Mexico, and Texas.

[PERMIT NO. TE–820085]

Applicant: The Nature Conservancy of Texas, San Antonio, Texas. Applicant requests an amendment to an existing permit to allow tracking, surveys, monitoring, and collection of dead specimens for the Attwater's prairie-chicken (*Tympanuchus cupido attwateri*) within Texas. In addition, applicant requests an amendment to allow presence/absence surveys for the interior least tern (*Sterna antillarum*).

[PERMIT NO. TE–038608]

Applicant: USGS BRD Sonoran Desert Field Station, SRNR, Tucson, Arizona. Applicant requests an amendment to an existing permit for research and recovery purposes to conduct presence/absence surveys by electrofishing, seining and dip-netting for Gila topminnow (*Poeciliopsis occidentalis occidentalis*) within Arizona.

[PERMIT NO. TE–053736]

Applicant: Barbara Garrison, Chandler, Arizona. Applicant requests permit for research and recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) and cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) within Arizona.

DATES: Written comments on these permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 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: Chief, Endangered Species Division, Albuquerque, New Mexico, at the above address. 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 30 days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 02–7576 Filed 3–28–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plan, Draft Supplemental Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway, Wyoming and Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Draft Supplemental Environmental Impact Statement for the Winter Use Plan for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway.

SUMMARY: Pursuant to section 102(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of Draft Supplemental Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway, Wyoming and Montana. The purpose for preparing the Plan/SEIS is to further the purposes of NEPA by soliciting more public comment and to consider additional information on new snowmobile technology not available at the time of the earlier decision. It analyzes 4 winter use management alternatives for the parks and evaluates the environmental consequences of the alternatives on wildlife, air quality, natural quiet, socioeconomics, and visitor experience.

Under alternative 1a-No Action, use and management practices in the parks and Parkway as decided by the November 22, 2000 record of decision for the Winter Use Plan, Final Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway would continue. The decision eliminated recreational snowmobile and snowplane use from the parks and Parkway by the winter of 2003–2004. Oversnow motorized access would be provided by means of mass transit snowcoaches. Alternative 1b is essentially the same as alternative 1a with the exception that an additional year would be allowed for the phasing

in of snowcoach only travel. Alternative 2 allows for the use of snowmobiles provided that EPA's proposed 2010 emission standards are met and sound levels do not exceed 78 decibels for publicly owned machines. It calls for a daily cap on numbers of snowmobiles and for increased NPS management of winter use. Alternative 3 provides for guided use of snowmobiles provided that best available technology standards for both emissions and noise levels are met for all machines. All alternatives emphasize an adaptive management strategy under which the number of snowmobiles allowed in the parks may be adjusted based on the results of monitoring and carrying capacity studies.

DATES: The NPS will accept comments on the DSEIS for 60 days beginning March 29, 2002. No public meetings are scheduled at this time.

ADDRESSES: Information will be available for public review and comment in the offices of the Superintendents and on the internet at *www.nps.gov/grte/winteruse/intro.htm.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Grand Teton National Park, (307) 739–3410.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Planning Office, Grand Teton National Park, PO Box 352, Moose, WY 83012. You may also comment via email to *grte_winter_use_seis@nps.gov.* Finally, you may hand-deliver comments to Grand Teton National Park, Moose, WY. We will not consider comments that do not include the name and mailing address of the submitter(s). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 13, 2002.

R. Everhart,

Director, Intermountain Region, National Park Service.

[FR Doc. 02–7627 Filed 3–28–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations 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 March, 2002.

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 sub-division thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division 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–39,789; Guildford of Maine, Guilford, ME

TA–W–40,001 & A; Crowe Rope Industries, Searsmont, ME and Winslow, ME

TA–W–40,218 & A; DMI Furniture, Inc., Louisville, KY and Huntingburg, IN

TA–W–41,051; West Point Foundry and Machine Co., West Point, GA

TA–W–40,200; International Paper, Wood Products Div., Washington, GA

TA–W–40,414; Catawissa Lumber and Specialty Co., Inc., West Jefferson, NC

TA–W–40,912; Kennametal Industrial Product Group, A Subsidiary of Kennametal, Inc., Pine Bluff, AR

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,021; Kryptonite Corp., A Subsidiary of Ingersoll-Rand Co, Canton, MA

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–41,021; Steel Valley Crane Service, Inc., Canfield, OH

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–40,020; Continental Fabrics, Inc., Angier, NC: August 29, 2000.

TA–W–39,807; Water Wonders, Inc., Santa Maria, CA: April 25, 2000.

TA–W–39,684; Lee Fashion Fabrics, Inc., Gloversville, NY: July 7, 2000.

TA–W–38,914; Bloomsburg Mills, Inc., Bloomsburg Plant, Bloomsburg, PA: March 15, 2000.

TA–W–40,101; Lee Dyeing Company of North Carolina, Gloversville, NY: August 24, 2000.

TA–W–40,504; LTV Steel Crop., Including Chicago Coke Plant, East Chicago, IN: December 19, 2000.

TA–W–40,538; JMC, LLC, d/b/a Nexpak, Rockaway, NJ: December 19, 2000.

TA–W–40,634; LTV Steel Corp., Hennepin, IL: December 18, 2000.

TA–W–40,635; LTV Steel Corp., Warren Coke Plant, Warren, OH: December 28, 2000.

TA–W–40,686; Autodie International, Inc., Grand Rapids, MI: December 28, 2000.

TA–W–40,724; LTV Steel Corp., Technology Center, Independence, OH: January 4, 2001.

TA–W–40,744; Wabash Aluminum Alloys LLC, Bellwood Plant, Richmond, VA: December 13, 2000.

TA–W–40,766; Harper-Wyman Co, Princeton, IL: December 5, 2000.

TA–W–40,776; Perkinelmer Life Sciences, Inc., Beltsville, MD: January 7, 2001.

TA–W–40,786 & A, B; LTV Steel Corp., Cuyahoga Valley Railway Co., LTV Railroad Companies, Cleveland, OH, River Terminal Railway Co., LTV Railroad Companies, Cleveland, OH and Chicago Short Line Railway Company, LTV Railroad Companies, Cleveland, OH: January 14, 2001.

TA–W–40,817 & A; Northshore Mining Co., Silver Bay, MN and Babbitt, MN: December 19, 2000.

TA–W–40,818; Agfa Corp., Brevard, NC: March 23, 2002.

TA–W–40,828; Citizens Gas and Coke Utility, Indianapolis Coke, Indianapolis, IN: January 21, 2001.

TA–W–40,921; Gulf Fibers, Inc., Axis, AL: January 16, 2001.
TA–W–40,982; Volk Packaging Corp., Biddeford, ME: January 31, 2001.
TA–W–41,017; Mason Shoe Manufacturing Co., Chippewa Falls, WI: February 17, 2001.
TA–W–41,030; LTV Steel Corp., Lorain Pellet Terminal, Lorain, OH: February 8, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. 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 March, 2002.

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 imports 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–05372; International Paper, Wood Products Division, Washington, GA.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05909; Volk Packaging, Biddeford, ME: January 31, 2001.
NAFTA–TAA–05753; Salem Oil & Grease Co., Salem, MA: January 14, 2001.
NAFTA–TAA–05648; Harper-Wyman Co., Princeton, IL: December 5, 2000.
NAFTA–TAA–5364; Continental Fabrics, Inc., Angier, NC: August 29, 2000.
NAFTA–TAA–04663; Bloomsburg Mills, Inc., Bloomsburg Plant, Bloomsburg, PA: March 15, 2000.
NAFTA–TAA–05871; Osram Sylvania, General Lighting, Winchester, KY: February 11, 2001.
NAFTA–TAA–05907 & A; Lee Fashion Fabrics, Inc., Gloversville, NY and Lee Dyeing Co. of North Carolina, Gloversville, NY: July 7, 2000.

I hereby certify that the aforementioned determinations were issued during the month of March, 2002. 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: March 25, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–7595 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

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 March, 2002.

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 or subdivision have decreased absolutely, and

(3) that increases of imports or 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 Determination 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–39,718; J and R Patterns, Inc., Fall River, MA
TA–W–40,572; Northeast Bleach and Dye, Inc., Schuylkill Haven, NY
TA–W–39,942; Recycled Offices, Inc., Sanford, NC
TA–W–40,303; Precision Tool and Design, Inc., Erie, PA
TA–W–39,517; Spectrum Control, Inc., Erie, PA
TA–W–40,632; Corning, Inc., Fall River Corning, NY
TA–W–40,777; New Textile Parts Co LTD, Gastonia, NC
TA–W–40,800; Ohio Magnetics, Inc., A Subsidiary of Peerless Winsmith, Inc., Maple Heights, OH
TA–W–49,948; ARW Mayville LLC, Mayville, WI
TA–W–39,958; Akzo Nobel Functional Chemicals, LLC, A Division of Akzo Nobel, Inc., Gallipolis Ferry, WV
TA–W–40,858; National Oilwell, McAlester, OK
TA–W–39,310; Gen Systems, Stamco Div., New Bremen, OH
TA–W–40,502; & A; Midcom, Inc., Huron, SD and Waterstown, SD
TA–W–40,613; Celestrica-Wisconsin, A Div. of Celestrica Corp., Chippewa Falls, WI
TA–W–40,589; Agere Systems, Optoelectronics Div., Breinigsville, PA and Reading, PA
TA–W–40,860; Inovec, Inc., Eugene, OR
TA–W–40,805; Valeo Climate Control, Decatur, IL
TA–W–40,403; Gen Corp—GDX Automotive, Marion, IN
TA–W–39,175; Flextronics Binghamton, Conklin, NY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons, specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,237; A and E Products Group, Forest City, NC
TA–W–40,892; JDS Uniphase, Electro-Optic Products Div., Bloomfield, CT
TA–W–40,857; Matco Electronics, Matco East Distribution Center, Verona, VA
TA–W–40,934; Tyco Electronics Corp., Jacobus, PA
TA–W–40,234; Agere Systems, Orlando, FL

TA–W–40,405 & A; Xerox Corp., (Soho), Small Office/Home Office Div., Canadaigua, NY and Farmington, NY
TA–W–40,836; Badger States Tanning, Milwaukee, WI
TA–W–40,997; Kraft Foods Lifesavers Co., Holland, MI

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–40,979; COE Industrial Electronics, Inc., Redlands, CA Located at California Steel Industries, Inc., Fontana, CA
TA–W–40,904; ANR Pipeline Co., Detroit, MI
TA–W–40,837; Golden Books Publishing Co., Inc., Racine, WI
TA–W–40,844; General Electric Co., GE Plastrics, Accounts Payable, Pittsfield, MA

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–40,746; Saint-Gobain Crystals and Detectors, Washougal, WA
TA–W–40,926; EVTAC Mining LLC, Formerly Thunderbird Mining, Eveleth, MN

The investigation revealed that criteria (2) and (3) has not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,495; G and L Service Co., North America (USA), Inc., Eagle Pass, 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–40,493 & A, B; Kaiser Aluminum and Chemical Corp., Tacoma Rod Mill, Tacoma, WA, Mead, WA and Trentwood, WA: November 9, 2000.
TA–W–40,357; Flextronics International, Palm Harbor, FL: November 7, 2000.
TA–W–40,082; Millennium Inorganic Chemicals, Hawkins Point Plant, Baltimore, MD: September 4, 2000.
TA–W–40,924; FCI Electronics, Clearfield, PA: August 15, 2000. Stoneridge, Inc., Cortland, OH: September 1, 2000.
TA–W–40,361; Donaldson Co., Inc., Old Saybrook, CT: November 9, 2000.
TA–W–40,869; Continental Tire North America, Inc., Barnesville, GA: January 2, 2001.
TA–W–40,920; Fasco Industries, Inc., Ozark, MO: August 15, 2000.
TA–W–40,217; Shirts Plus II, Inc., Loretto, TN: September 17, 2000.
TA–W–40,038; H H Smith, Inc., Meadville, PA: August 31, 2000.
TA–W–40,745; New Holland North America, Inc., CNH Global N.V., Belleville, PA: December 13, 2000.
TA–W–40,864; U.S. Consolidation, Inc., Newark, NJ: July 31, 2000.
TA–W–40,674 & A; B.B. Walker Co., Asheboro, NC and Bender Shoe Co., Somerset, PA: December 17, 2000.
TA–W–40,563; Bestform, Inc., Broad Street Sewing Facility, Johnstown, PA: December 23, 2001.
TA–W–40,563A, B, C; Bestform, Inc., Johnstown Distribution Center, Johnstown, PA, Windber Sewing Facility, Windber, PA and Sidman Distribution Center, Sidman, PA: October 17, 2000.
TA–W–40,993; L and G Manufacturing, Inc., Archbald, PA: January 16, 2001.
TA–W–40,811; Materials Processing, Inc., Coatings Div., Riverview, MI: January 8, 2001.
TA–W–40,604; & Matsushita Kotokubi Electronics Industries of America, Vancouver, WA and Matsushita Kotobuki Electronics Sales of America, Portland, OR: November 13, 2000.
TA–W–40,680; Pan-Am Shoe Co., Inc., Camuy, PR: December 21, 2000.
TA–W–40,884; Tracy Minntronix Corp., Tracy, MN: January 29, 2001.
TA–W–39,606; California Manufacturing Co., California, MO: June 19, 2000.
TA–W–39,354; Neely Manufacturing Co., Smithville, TN: May 15, 2000.
TA–W–40,271 & A; Symbol Technologies, Holtsville, NY and Bohemia, NY: September 18, 2000.
TA–W–40,545; Appleton Coated Papers, Combined Locks, WI: December 27, 2000.
TA–W–40,864; ECC Card Clothing, Inc., A Div. Of Carclo U.S. Holdings, Inc., Fall River, MA: January 14, 2001.
TA–W–40,503; International Paper, International Papers Business, Menasha, WI: November 12, 2000.
TA–W–40,285; Converter Concepts, Inc., Quincy, IL: October 11, 2000.
TA–W–40,584 & A; Rockwell Collins, Pomona, CA and Irvine, CA: January 3, 2001 through March 8, 2004.
TA–W–40,654; In Vogue Apparel, West Hazleton, PA: December 3, 2000.
TA–W–40,582; GE Lighting, Inc., Austintown Products Plant, Youngstown, OH: November 13, 2000.
TA–W–40,340; Linnton Plywood Association, Portland, OR: October 29, 2000.
TA–W–40,667; Leech Tool and Die Works, Inc., Meadville, PA: December 19, 2000.
TA–W–39,716; Michigan Rag Co., Inc., Grand Haven, MI: July 23, 2000.
TA–W–40,160; Crystal Manufacturing, Inc., Fall River, MA: September 17, 2000.
TA–W–40,682; World Kitchen, Inc., Martinsburg, WV: December 20, 2000.
TA–W–40,767; Uniroyal Goodrich Tire Manufacturing, Michelin North America, Inc., Tuscaloosa, AL: November 30, 2000.
TA–W–40,813; & A; Blough-Wagner Manufacturing Co., Inc., Middleburg, PA and Elysburg, PA: January 15, 2001.
TA–W–40,936; LTV Steel Corp., Lime Plant, Grand River, OH: January 28, 2001.
TA–W–40,287; Barranco Apparel Group, Ruth of Carolina Div., Hendersonville, NC: October 10, 2000.
TA–W–40,898; St. Clair Technologies, Inc., Charlotte, MI: February 4, 2001.
TA–W–40,848; Wateree Textile Corp., Lugoff, SC: January 10, 2001.
TA–W–40,927; Teleflex, Inc., Waterbury, CT: February 4, 2001.
TA–W–40,907; Pak-Mor Manufacturing Co., San Antonio, TX: January 23, 2001.
TA–W–39,458; MacDonald Footwear, Inc., Skowhegan, ME: June 1, 2000.
TA–W–40,162; Coraza Systems, Inc., Formerly Computer Cabinet Corp., San Jose, CA: September 18, 2000.
TA–W–39,923; Illbruck Automotive, Inc., Howell, MI: September 4, 2000.
TA–W–40,859; Jacmel Jewelry, Inc., Long Island City, NY: November 27, 2000.
TA–W–40,464; Low Complexity Manufacturing Group, Inc., Utica, NY: October 8, 2000.
TA–W–40,283; United Foods, Inc., Pictsweet Mushroom Farm, Salem, OR: September 20, 2000.
TA–W–40,525 & A,B,C,D; The Boeing Co., Commercial Airplane Group, Seattle, WA, Puget Sound Region, WA, Spokane, WA, Portland, OR and Wichita, KS: February 25, 2002.
TA–W–40,933; Oxford Slacks, Oxford Slacks Div., Of Oxford Industries, Inc., Monroe, GA: January 29, 2001.
TA–W–40,782; Philadelphia Mixers, Palmyra, PA: January 30, 2001.
TA–W–40,964; Ultrafem, Inc., Missoula, MT: January 16, 2001.
TA–W–39,852; Alfred Angelo Co., Horsham, PA: August 7, 2000.
TA–W–39,540; Oxford Automotive, Masury, OH: June 13, 2000.
TA–W–39,856; Krisport, Inc., Wheeling, WV: August 7, 2000.
TA–W–39,815; Columbus McKinnon Corp., Yale Hoists Div., Forrest City, AR: August 2, 2000.
TA–W–40,456; Magnequench International, Anderson, IN: December 7, 2000.
TA–W–40,459; Ispat Inland, Inc., Indiana Harbor Works, East Chicago, IN: December 13, 2000.
TA–W–40,810 & A, B; Solon Manufacturing Co., Skowhegan, ME, Solon, ME and Plymouth, NH: January 15, 2001.
TA–W–40,820 & A; John Solomon, Inc., Somerville, MA and Winder, GA: January 16, 2001.
TA–W–40,630: U.S.A. Apparel Enterprises, Inc., Fall River, MA: November 30, 2000.
TA–W–40,703 & A, B; Liberty Fabrics, Div. of Sara Lee, New York, Gordonsville, VA and LCM Facility, Gordonsville, VA: December 27, 2000.
TA–W–39,337; Bayer Corp., Consumer Care Div., Elkart, IN: May 14, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. 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 March, 2002.

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 increased imports 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–05792; TNS Mills, Inc., Rockingham, NC
NAFTA–TAA–05655; Kennametal Industrial Product Group, A Subsidiary of Kennametal, Inc., Pine Bluff, AR
NAFTA–TAA–05603; In Vogue Apparel, West Hazelton, PA
NAFTA–TAA–05294; Arms Industrial, Inc., Lockport, IL
NAFTA–TAA–05581; G and L Service Company, North America (USA), Inc., Eagle Pass, TX
NAFTA–TAA–05751; Goodyear Tire and Rubber Co., East Gadsden, AL
NAFTA–TAA–05215; APW Mayville LLC, Mayville, WI
NAFTA–TAA–05005; California Manufacturing Co., California, MO
NAFTA–TAA–05548; Clebert's Hosiery Mill, Inc., Connelly Springs, NC
NAFTA–TAA–05858; West Point Foundry and Machine Co., West Point, GA
NAFTA–TAA–05890; Kraft Foods, Lifesavers Co., Holland, MI
NAFTA–TAA–-05726 & A; Agere Systems, Optoelectronics Div., Breinigsville, PA and Reading, PA
NAFTA–TAA–05493; Buckeye Steel Castings Co., Columbus, OH
NAFTA–TAA–05737; Harsco Corp., Heckett-Multiserv Div., Whiting, IN, Located at LTV Steel, East Chicago, IN
NAFTA–TAA–04868; Flextronics Binghamton, Conklin, NY
NAFTA–TAA–05082; Columbus McKinnon Corp., Yale Hoists Div., Forrest City, AR
NAFTA–TAA–05589; Gencorp—GDX Automotive, Marion, IN
NAFTA–TAA–05354; A and E Products Group, Forest City, NC
NAFTA–TAA–05699; Applied Concepts, Inc., Warrendale, PA
NAFTA–TAA–05766; Badger States Tanning, Milwaukee, WI

The workers firm does not produce an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended.

NAFTA–TAA–5756; AT&T, Broadband Div., Los Angeles, CA
NAFTA–TAA–5856; Black and Decker Power Tools, Nashville, TN

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment.

NAFTA–TAA–05362; Key Plastics, LLC, Felton, PA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–05810; Sanmina, Inc., A Subsidiary of Sanmina–Sci Company, Clinton, NC

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05899; Renfro Corp., Star Plant, Star, NC: February 22, 2001.
NAFTA–TAA–05925; Master Lock Co., A Subsidiary of Fortune Brands, Inc., Milwaukee, WI: January 31, 2001.
NAFTA–TAA–05828; T and K Manufacturing, Brownstown, PA: January 23, 2001.
NAFTA–TAA–05822; Sims Manufacturing Co., Inc., Rutland, MS: January 30, 2001.
NAFTA–TAA–05824; Uniroyal Goodrich Tire Manufacturing, Michelin North America, Inc., Tuscaloosa, AL: January 30, 2001.
NAFTA–TAA–05146; Atchison Products, Inc., Boonville, MO: July 25, 2000.
NAFTA–TAA–05495; Thermal Industries, Inc., Vinylium Corp., Pittsburgh, PA: October 19, 2000.
NAFTA–TAA–05652; Magnequench International, Anderson, IN: December 13, 2000.
NAFTA–TAA–05307; H H Smith, Inc., Meadville, PA: August 31, 2000.
NAFTA–TAA–05279; Fasco Industries, Inc., Ozark, MO: August 6, 2000.
NAFTA–TAA–05757; Wateree Textile Corp., Lugoff, SC: January 10, 2001.
NAFTA–TAA–05710 & A; Rockwell Collins, Passenger Systems, Pomona, CA, Irvine, CA: January 3, 2001 Through March 8, 2004.
NAFTA–TAA–05502; Linnton Plywood Association, Portland, OR: October 30, 2000.
NAFTA–TAA–05595; Tenneco Automotive, Ligonier, IN: November 29, 2000.
NAFTA–TAA–05791; L and G Manufacturing, Inc., Archbald, PA: January 16, 2001.
NAFTA–TAA–05695 & A; B.B. Walker Co., Asheboro, NC and Bender Shoe Co., Somerset, PA: December 19, 2000.
NAFTA–TAA–5798; Oxford Slacks, Oxford Slacks Div., Div. of Oxford Industries, Inc., Monroe, GA: November 24, 2001.
NAFTA–TAA–05800; FDB, Inc., Lincolnton, GA: January 24, 2001.
NAFTA–TAA–05582; Kentucky Textiles, Inc., Paris, KY: November 20, 2000.
NAFTA–TAA–5902; Cedo Door Products, Ass Ablow Door Group LLC, Harlingen, TX: January 2, 2001.
NAFTA–TAA–05908; TRW, Inc., TRW Automotive, Cookville, TN: February 22, 2001.
NAFTA–TAA–5913; JDS Uniphase, Electro-Optic Products Div., Bloomfield, CT: February 12, 2001.
NAFTA–TAA–05736 & A, B; Solon Manufacturing Co., Skowhegan, ME, Solon, ME and Plymouth, NH: January 15, 2001.
NAFTA–TAA–05796 & A; John Solomon, Inc., Somerville, MA and Winder, GA: January 31, 2001.
NAFTA–TAA–05761; Clear Pine Mouldings, Inc., Prineville, OR: January 8, 2001.
NAFTA–TAA–04912; Neely Manufacturing Co., Smithville, TN: May 15, 2000.
NAFTA–TAA–05838; Philadelphia Mixers, Palmyra, PA: December 10, 2000.
NAFTA–TAA–05370; New World Pasta LLC, Lebanon, PA: September 22, 2000.
NAFTA–TAA–05781; Pak-Mor Manufacturing Co., San Antonio, TX: January 18, 2001.
NAFTA–TAA–05928; Perkinelmer Life Sciences, Inc., Beltsville, MD: January 4, 2001.
NAFTA–TAA–05684; Kraft Foods North America, Inc., Allentown, PA: December 13, 2000.
NAFTA–TAA–05371; Coraza Systems, Inc., Formerly Computer Cabinet Corpo., San Jose, CA: September 18, 2000.
NAFTA–TAA–05450; United Foods, Inc., Pictsweet Mushroom Farm, Salem, OR: September 20, 2000.
NAFTA–TAA–05825; Vaapco Group, LLC, d/b/a Novatek Manufacturing, Millers Tavern, VA: January 23, 2001.
NAFTA–TAA–05855; Low Complexity Manufacturing Group, Inc., Utica, NY: October 23, 2000.
NAFTA–TAA–05890; Bayer Corp., Consumer Care Div., Elkhart, IN: May 14, 2000.

I hereby certify that the aforementioned determinations were issued during the month of March,

2002. 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: March 22, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–7594 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,595]

Elkem Metals Company, Alloy, West Virginia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 22, 2002 in response to a worker petition which was filed by Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–89 on behalf of workers at Elkem Metals Company, Alloy, West Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed in Washington, D.C. this 5th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7599 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,794]

Frederick Goldman, New York, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2002, in response to a petition filed by workers on behalf of all workers at Frederick Goldman, New York, New York.

The petition group of workers is under an existing investigation for which a determination has not been issued (TA–W–40,774). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 4th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7600 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,467]

Gold Seam, Passaic, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 21, 2001, in response to a worker petition that was filed on behalf of workers at Gold Seam, Passaic, New Jersey.

The Department was unable to locate an official of the company to obtain the information necessary to issue a determination (TA–W–40,467). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 21st day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7598 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,577]

Kurt Manufacturing Company, Minneapolis, Minnesota; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 14, 2002, in response to a petition filed by three workers on behalf of all workers at Kurt Manufacturing Company, Minneapolis, Minnesota.

The workers' petition regarding the investigation is invalid. Each of the petitioners is employed in a different division of Kurt Manufacturing. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed at Washington, D.C., this 8th day of March 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7597 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,801]

LTV Steel Corporation River Terminal Railway Company LTV Railroad Companies, Cleveland, Ohio: Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2002, in response to a worker petition filed by the United Transportation Union, Local 1661, on behalf of workers at River Terminal Railway Company, LTV Railroad Companies, LTV Steel Corporation, Cleveland, Ohio.

The petitioning group of workers is subject to an ongoing investigation (TA–W–40,786). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Dated: Signed in Washington, D.C. this 21st day of March 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7596 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,423]

Outboard Marine Corporation (OMC), Delavan, Wisconsin; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 2001, in response to a petition filed on behalf of all workers at Outboard Marine Corporation (OMC), Delavan, Wisconsin.

The company filed Chapter 7 bankruptcy for all the locations of the Outboard Marine Corporation, including the subject facility. The trustee was unable to locate the records of the company to provide the Department the information necessary to issue a determination regarding the worker

group eligibility requirements under Section 222 of the Trade Act of 1974. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 5th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7602 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,291]

U.S. Bronze Foundry & Machine Incorporated, Meadville, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 29, 2001, in response to a petition filed by a company official on behalf of workers at U.S. Bronze Foundry & Machine Inc., Meadville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–7601 Filed 3–28–02; 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 determination 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 purposes 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.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

No. WI020039—See WI020033
No. WI020040—See WI020033

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I:

New York
NY020013 (Mar. 01, 2002)

VOLUME II:

Pennsylvania
PA020001 (Mar. 01, 2002)
PA020002 (Mar. 01, 2002)
Pennsylvania
PA020003 (Mar. 01, 2002)
PA020004 (Mar. 01, 2002)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related 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.

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Signed at Washington, D.C. this 21st day of March 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–7301 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11002, et al.]

Proposed Exemptions; Deutsche Bank AG

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The

applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG, Located in Frankfurt/Main, Germany

[Exemption Application No.: D–11002]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

I. General Exemption

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in section V(b)), in which the plan has an interest, and which is managed by Deutsche Bank AG (Deutsche Bank or the Applicant)(as defined in section V(a)), if the following conditions are satisfied:

(a) At the time of the transaction (as defined in section V(i)), the party in interest, or its affiliate (as defined in section V(c)), does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate Deutsche Bank as a manager of any of the plan's assets, or

(2) Negotiate the terms of the management agreement with Deutsche Bank (including renewals or modifications thereof) on behalf of such plan;

(b) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6)[2] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1)[3] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87)[4] (relating to certain mortgage financing arrangements);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of Deutsche Bank, and either Deutsche Bank, or (so long as Deutsche Bank retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by Deutsche Bank, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(d) The party in interest dealing with the investment fund is neither Deutsche Bank nor a person related to Deutsche Bank (within the meaning of section V(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by Deutsche Bank, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of this exemption) or by the same employee organization, and managed by Deutsche Bank, represent more than 20 percent (20%) of the total client assets managed by Deutsche Bank at the time of the transaction;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Deutsche Bank, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g)(1) Neither Deutsche Bank nor any affiliate thereof (as defined in section V(d)), nor any owner, direct or rect, of a 5 percent (5%) or more interest in Deutsche Bank is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of the Act.

(2) The relief provided by this exemption is available to Deutsche Bank (as defined in section V(a)), notwithstanding the guilty plea on March 11, 1999, of Deutsche Bank's affiliate, Bankers Trust Company (Bankers Trust), to three counts of violations of 18 U.S.C. § 1005, provided that neither Deutsche Bank nor any affiliate, nor any owner, direct or indirect of a 5 percent (5%) or more interest in Deutsche Bank is convicted of any of the crimes (described in section I(g)(1)), and provided that Bankers Trust is not subsequently convicted of any crimes (described in section I(g)(1)).

(3) For purposes of this section I(g), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[2] 46 FR 7527, January 23, 1981.

[3] 48 FR 895, January 7, 1983.

[4] 47 FR 21331, May 18, 1982.

whether that judgment remains under appeal.

(h) Prior to entering into a transaction covered by this exemption Deutsche Bank must agree in writing with a plan:

(1) That the transaction is governed by the laws of the United States and that Deutsche Bank is a fiduciary of the plan pursuant to the provisions of the Act;

(2) To submit to the jurisdiction of the United States district courts;

(3) To appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); and

(4) To consent to service of process on the Process Agent.

(i) Upon request, Deutsche Bank provides to each plan affected by this exemption copies of the Notice of Proposed Exemption (the Notice) and the final exemption, if granted;

(j) Deutsche Bank provides each plan affected by this exemption with a written consent to service of process in the United States and to the jurisdiction of the courts of the United States for any civil action or proceeding brought against Deutsche Bank with respect to the subject transactions, which consent provides that process may be served on Deutsche Bank through service on Deutsche Bank's New York branch (or any other branch or affiliate of Deutsche Bank that is domiciled in the United States);

(k) Deutsche Bank and/or its affiliates (as defined in section V(c)(1)), maintains or causes to be maintained within the United States for a period of six (6) years from the date of each transaction covered by this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable persons (as described in section I(l)) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank and/or its affiliates (as defined in section V(c)(1)), records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than Deutsche Bank and/or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination (as required by section I(l)(1));

(l)(1) Except as provided in section I(l)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in section I(k) are unconditionally available at their customary location during normal business hours to: (i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission; (ii) any fiduciary of a plan affected by this exemption or any duly authorized representative of such fiduciary; (iii) any contributing employer to any plan affected by this exemption or any duly authorized employee representative of such employer; and (iv) any participant or beneficiary of any plan affected by this exemption, or any duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in section I(l)(1)(ii)–(iv) are authorized to examine the trade secrets of Deutsche Bank or commercial or financial information which is privileged or confidential;

(m) Upon request, Deutsche Bank discloses to the plan sponsor and/or the named fiduciary of each plan affected by this exemption information concerning the nature and extent of Deutsche Bank's regulation by German governmental authorities.

II. Specific Exemptions for Employers

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a), 406(b)(1) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The sale, leasing, or servicing of goods (as defined in section V(j)), or to the furnishing of services, to an investment fund managed by Deutsche Bank, by a party in interest with respect to a plan having an interest in the investment fund, if__

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after the date this exemption is granted, the amount attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to section II(a) of this exemption does not exceed one percent (1%) of the gross receipts derived from all sources for the prior taxable year of such party in interest, and

(5) The requirements of sections I(c) through (n) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund managed by Deutsche Bank to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by such plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) No commission or other fee is paid by the investment fund to Deutsche Bank or to the employer, or to an affiliate of Deutsche Bank or the employer (as defined in section V(c)), in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of Deutsche Bank in which such plan has an interest does not exceed 10 percent (10%) of the fair market value of the assets of such plan held in those investment funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a plan shall be considered to own the same proportionate undivided interest in each asset of the investment fund or funds as its proportionate interest in the total assets of the investment fund(s). For purposes of this requirement, the term, ''employer real property,'' means real property leased to, and the term, ''employer securities,'' means securities issued by, an employer any of whose employees are covered by such plan or a party in interest of the plan by reason of a relationship to the employer described in subparagraphs (E) or (G) of section 3(14) of the Act, and

(6) The requirements of sections I(c) through (n) are satisfied with respect to the transaction.

III. Specific Lease Exemption for Deutsche Bank

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an investment fund managed by Deutsche Bank to Deutsche Bank, a person who is a party in interest of a plan by virtue of a relationship to Deutsche Bank described in subparagraphs (G), (H), or (I) of section 3(14) of the Act, or a person not eligible for the General Exemption of Part I of this exemption by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed the greater of 7500 square feet or one percent (1%) of the rentable space of the office building, integrated office park or of the commercial center in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Deutsche Bank, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission or other fee is paid by the investment fund to Deutsche Bank, any person possessing the disqualifying powers described in section I(a), or any affiliate of such persons (as defined in section V(c)), in connection with the transaction.

IV. Transactions Involving Places of Public Accommodation

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by Deutsche Bank to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

V. Definitions

For purposes of this exemption:

(a) The term, ''Deutsche Bank'' means Deutsche Bank AG, provided that Deutsche Bank AG: (i) has the power to manage, acquire or dispose of assets of a plan affected by this exemption; (ii) has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) in excess of $10,000,000; (iii) has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained Deutsche Bank AG to manage the assets of the plan; and (iv) is subject to regulation by the German federal banking supervisory authority, known as the Bundesaufsichtsamt fuer das Kreditwesen (the BAK).

(b) An ''investment fund'' includes individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of Deutsche Bank) is subject to the discretionary authority of Deutsche Bank.

(c) For purposes of section I(a), section I(k), and Part II, an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by such plan will also be considered affiliates with respect to each other for purposes of section I(a), if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of section I(g), an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or 5 percent (5%) or more partner, or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as described in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets.

(e) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(g) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act, or a brother, a sister, or a spouse of a brother or sister.

(h) Deutsche Bank is ''related'' to a party in interest for purposes of section I(d) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in Deutsche, Bank or if Deutsche Bank (or a person controlling, or controlled by, Deutsche Bank) owns a 5 percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term, ''interest,'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights, or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) The ''time'' as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction

that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the effective date of this exemption, or a renewal that requires the consent of Deutsche Bank occurs on or after such effective date, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such time as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to Deutsche Bank. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of Deutsche Bank. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term, ''goods'' includes all things which are movable or which are fixtures used by an investment fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(k) For purposes of section V(a) of this exemption, the term ''equity capital'' means stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption, if granted, will be effective retroactively but will be temporary in nature. In this regard, Deutsche Bank, AG, among others, on July 27, 1999, obtained Prohibited Transaction Exemption 99–29 (PTE 99–29) [5] which provided that it would not be precluded from functioning as a ''qualified professional asset manager'' (a QPAM), pursuant to Prohibited Transaction Class Exemption 84–14 (PTCE 84–14),[6] solely because of a failure to satisfy section I(g) of PTCE 84–14, as a result of a guilty plea filed by an affiliate on March 11, 1999, to three counts of a felony. The relief provided by PTE 99–29 was limited to a period of ten (10) years from July 27, 1999, the date of the publication of the final exemption for PTE 99–29 in the **Federal Register**. The Department in proposing the subject exemption does not intend that, if granted, the relief, as described herein, be available beyond the time remaining in the ten (10) year period established by PTE 99–29. Accordingly, the relief provided by this exemption, if granted, will be retroactive, effective as of June 12, 2001, the date when the application for exemption was filed with the Department, and will continue to be available through July 27, 2009, the date that is ten (10) years from the publication in the **Federal Register** of the final exemption for PTE 99–29.

In the case of a transaction that continues beyond July 27, 2009, the transaction shall be deemed to occur until it is terminated. Although the relief provided by this exemption will not be available after July 27, 2009, for any new, or other transactions that require the consent of Deutsche Bank, as described herein, such relief will continue to apply beyond July 27, 2009, for continuing transactions entered into prior to that date, provided such transactions satisfied the conditions of this exemption. In this regard, see section V(i) regarding continuing transactions.

Should the Applicant wish to extend, beyond July 27, 2009, the relief provided by this exemption to new or additional transactions, or should the Applicant wish for any reason to amend the conditions of this exemption, the Applicant may submit another application for exemption. In this regard, the Department expects that prior to filing another exemption application seeking relief for new or additional transactions or to amend this exemption, the Applicant should be prepared to demonstrate compliance with the conditions of this exemption.

Summary of Facts and Representations

1. The request for relief from the prohibited transaction provisions of the Act and Code was filed on behalf of Deutsche Bank and, if granted, will be applicable to Deutsche Bank, as that term is defined in Section V(a) of this proposed exemption. Deutsche Bank is a bank organized under the laws of the Federal Republic of Germany. In this regard, Deutsche Bank provides a broad variety of banking, fiduciary, record keeping, custodial, brokerage, and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans, and private investors worldwide.

As of December 31, 2000, Deutsche Bank held 697,306 million Euros in assets and 19,807 million Euros in stockholder equity. Deutsche Bank manages over $585 billion in assets either through collective trusts, separately managed accounts, or mutual funds. It is represented that, as of the last day of its most recent fiscal year, Deutsche Bank has equity capital in excess of $10,000,000.

2. It is anticipated that plans, particularly large plans, with hundreds or thousands of known and unknown parties in interest may enter into the transactions described in this proposed exemption. Deutsche Bank anticipates that such transactions would include derivatives, repurchase agreements with foreign banks or broker dealers, foreign exchange transactions, and other transactions not exempted by other individual or class exemptions.[7]

3. The exemption requested by Deutsche Bank would permit: (1) Transactions between parties in interest with respect to a plan and an investment fund in which such plan has an interest, if the assets in such fund are managed by Deutsche Bank; (2) the sale, leasing, servicing of goods, or the furnishing of services to an investment fund managed by Deutsche Bank by an employer or an affiliate, and the leasing of office or commercial space by such investment fund to an employer or an affiliate where plans sponsored by such employer or an affiliate have an interest in such fund; (3) the leasing of office or commercial space by an investment fund managed by Deutsche Bank to Deutsche Bank or a person who is a

[5] 64 FR 40623, July 27, 1999

[6] 49 FR 9494 (March 13, 1984), as corrected, 50 FR 41430 (October 10, 1985).

[7] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this proposed exemption, and that satisfaction of the conditions of this proposed exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the manager or other plan fiduciary must act prudently with respect to the decision to enter into an investment transaction, as well as to the negotiation of the specific terms under which the plan will engage in such transaction. In addition, the plan's named fiduciary must act prudently and solely in the interest of the plan's participants and beneficiaries in selecting Deutsche Bank to manage plan assets and in periodically monitoring Deutsche Bank's performance.

party in interest of a plan by virtue of a relationship to Deutsche Bank, as described in 3(14)(G) (H), or (I) of the Act, or a person not eligible for the general exemption of Part I of this proposed exemption by reason of section I(a); and (4) the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund which is managed by Deutsche Bank to a party in interest with respect to a plan having an interest in such fund; provided certain condition are satisfied. The Applicant represents that these transactions have not been consummated, nor will such transactions be consummated without an exemption.

Relief is requested from the prohibitions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act and section 4975(c)(1)(A)-(E) of the Code. According to the Applicant, the transactions described in Parts I, II, III, and IV of this proposed exemption may violate section 406(a)(1)(A)–(D) of the Act, because a party in interest is involved or may be benefitted. Further, in the opinion of the Applicant, the transactions described in Parts II, III, and IV of this proposed exemption would arguably violate 406(b)(1) of the Act, because such transactions may benefit a sponsoring employer, investment manager, or other plan fiduciaries. Further, the transactions described in section II(b) of the proposed exemption may violate section 407(a) of the Act, because such transactions involve the leasing of fund real property to sponsoring employers. Finally, the transactions described in sections III and IV of this proposed exemption could violate section 406(b)(2) of the Act and section 4975(c)(1)(E) of the Code to the extent that Deutsche Bank, the employer, or other fiduciary with authority or control over plan assets is involved in the transactions.

4. With regard to each of the transactions described in paragraph 3 above, Deutsche Bank has requested relief from the prohibited transaction provisions of the Act and Code which is identical to the relief granted in PTCE 84–14. PTCE 84–14 provides conditional relief for various parties in interest to engage in transactions involving plan assets if, among other conditions, such assets are managed by a QPAM, who is independent of such parties in interest.

PTCE 84–14 does not permit a foreign bank to act as a QPAM. In this regard, section V(a)(1) of PTCE 84–14 requires that, in order to qualify as a QPAM, a bank must be a banking institution organized under the laws of the United States, as defined in section 202(a)(1) of the Investment Advisers Act of 1940. As Deutsche Bank is organized under the laws of the Federal Republic of Germany, rather than the laws of the United States, Deutsche Bank does not qualify as a QPAM, and cannot rely on the relief provided by PTCE 84–14. Accordingly, Deutsche Bank has submitted an application for administrative exemption and requested the relief proposed herein.

In the opinion of the Applicant, the fact that Deutsche Bank is not a U.S.-chartered bank carries little, if any significance in terms of the ability of Deutsche Bank to operate independently or to manage plan assets efficiently and effectively. Given Deutsche Bank's size, global geographic distribution, financial strength, and experience managing assets, the Applicant maintains that Deutsche Bank is better qualified than many U.S. banks to act as an independent asset manager.

5. Deutsche Bank believes that its operations are regulated as much as U.S.-chartered banks. In this regard, Deutsche Bank's operations are regulated not only by the supervisory authorities of various host countries, but by German authorities, as well. Specifically, Deutsche Bank is subject globally to comprehensive supervision and regulation on a consolidated basis by the German federal banking supervisory authority, referred to herein as the BAK. The BAK is a federal institution with ultimate responsibility to the German Ministry of Finance. The BAK supervises the operations of banks, banking groups, financial holding groups and foreign bank branches in Germany and has the authority to: (a) Issue and withdraw banking licenses, (b) issue regulations on capital and liquidity requirements of banks, (c) request information and conduct investigations, (d) intervene in cases of inadequate capital or liquidity, endangered deposits, or bankruptcy by temporarily prohibiting certain banking transactions.

The BAK ensures that Deutsche Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and financial resources. The BAK reviews compliance with these operational and internal control standards through an annual audit performed by the year-end auditor and through special audits ordered by the BAK. The supervisory authorities require information on the condition of Deutsche Bank and its branches through periodic consolidated financial reports and through a mandatory annual report prepared by the auditor.

Additionally, the BAK in cooperation with the Deutsche Bundesbank (Bundesbank) supervises all branches of Deutsche Bank, wherever located. The Bundesbank is the central bank of the Federal Republic of Germany and is an integral part of the European Central Banks. For Deutsche Bank's branches domiciled in European Economic Area (EEA) member states, the BAK is the lead supervisory authority pursuant to the rule on the ''European Passport,'' and only some aspects are subject to complementary supervision by supervisory authority of the host country.

It is represented that Deutsche Bank is subject to announced and unannounced on-site audits, and all other supervisory controls applicable to German Banks. With respect to branches located in EEA member states, such audits are carried out consistent with applicable European directives. With respect to branches outside the EEA, such audits are carried out consistent with applicable international agreements, memoranda of understanding, or other arrangements with the relevant foreign supervisory authorities.

Deutsche Bank's branches domiciled outside the EEA are also subject to local regulation and supervision by the supervisory authority of the host country. In this regard, for example, Deutsche Bank AG, New York Branch, is regulated and supervised by the New York State Banking Department. Certain activities of Deutsche Bank AG, New York Branch are also regulated and supervised by the Federal Reserve Bank of New York.

There are two deposit insurance programs that cover Deutsche Bank. The first is a European Union required mandatory deposit insurance system established in 1998 that insures deposits denominated in the currency of an EEA member state up to the lesser of 90 percent (90%) of the deposit amount or 20,000 euros. This statutory deposit protection scheme is maintained, as far as private commercial banks like Deutsche Bank are concerned, by a separate institution and is subject to supervision by the BAK. In addition since 1976, the Association of German Banks has maintained a voluntary deposit protection program called the Deposit Protection Fund that safeguards liabilities in excess of the thresholds guaranteed by the European Union program, up to a protection ceiling for each creditor of 30 percent (30%) of the liable capital of the bank. The Deposit

Protection Fund is funded by regular contributions paid by every German bank which has elected to participate in the Deposit Protection Fund. Participating banks may be required to make special contributions to the extent requested by the Deposit Protection Fund to enable it to fulfill its purpose. It is represented that Deutsche Bank has elected to participate in the Deposit Protection Fund.

Upon request, Deutsche Bank will disclose to the plan sponsor and/or the named fiduciary of each plan affected by this exemption information concerning the nature and extent of Deutsche Bank's regulation by German governmental authorities, as described above and in the application for exemption. In addition, Deutsche Bank will provide to each plan affected by this exemption, if granted, copies of the proposed and the final exemption.

6. The Applicant maintains that the proposed exemption is administratively feasible because, the requested exemption would not impose any administrative burden on the Department which is not already imposed by PTCE 84–14. In this regard, no action would be necessary on the part of the Department to effect the transactions other than by granting the exemption. As a condition of this exemption, Deutsche Bank or an affiliate must maintain or cause to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the Department, the IRS, and other persons to determine whether the conditions of this exemption have been met.

7. The Applicant believes that the proposed exemption is in the best interest of the participants and beneficiaries of the affected plans. In this regard, the Applicant maintains that the proposed transaction would broaden the choice of qualified independent assets managers available to such plans, would increase transactional efficiencies, and would afford greater opportunities to such plans to diversify through international investments. With a physical presence in 27 different countries and with access to 90 markets worldwide, the Applicant maintains that Deutsche Bank can provide more informed and cost-efficient asset management services for international investments than most U.S. banks.

8. Without the proposed exemption, plans might lose opportunities to enter into beneficial financial transactions with parties in interest that would enhance the return to such plans. In this regard, restricting plans to domestic banks which may have little or no expertise or connections with a given target market may result in inefficient execution, investment decisions based on imperfect information, or missed investment opportunities.

9. In the absence of the proposed exemption, the Applicant must undertake costly and time consuming steps to examine each transaction to ensure that a given transaction on behalf of a plan investor does not involve or benefit the many parties in interest that may exist with respect to such plan. These efforts encompass not only a plan's primary investments, but also collateral investments and investment-related transactions, including, *e.g.,* sweep investments necessary for cash management, foreign exchange transactions necessary for investments denominated in foreign currencies, securities lending, and the use of brokers and agents to execute the foregoing. In this regard, the Applicant points out that the costs of these efforts are ultimately borne by the plan investors, as reflected in higher asset management fees, higher transaction costs, and opportunity costs.

10. The proposed exemption contains conditions which are designed to ensure the presence of adequate safeguards to protect the interests of the participants and beneficiaries of plans regarding the subject transactions. Except for the fact that Deutsche Bank is not a U.S.-chartered bank, as required by section V(a)(1) of PTCE 84–14, the proposed exemption contains conditions substantially similar to those which are set forth in PTCE 84–14.

In addition to the requirements of the PTCE 84–14, Deutsche Bank has agreed to additional conditions, as set forth in section I(h) through (m), which are designed to ensure that the plans are protected. In this regard, Deutsche Bank will indemnify and hold harmless each plan affected by this exemption against any harm, damage, or injury (including interest and attorney's fees) arising from any fiduciary breach or other wrongdoing of Deutsche Bank acting in its capacity as asset manager for such plan. Further, Deutsche Bank has agreed that enforcement by a Plan of the indemnity provided by Deutsche Bank will occur in the United States district courts.

It is represented that there are adequate safeguards to minimize the risks associated with the Deutsche Bank's foreign nationality. Deutsche Bank will comply with the indicia of ownership of plan assets requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. To ensure that a plan will not have to litigate in a foreign country, Deutsche Bank has consented to the appointment of an agent for service of process in the United States; has consented to service of process on such agent; and to the jurisdiction of the district courts of the United States for any civil action or proceeding brought against Deutsche Bank with respect to the subject transactions. Such consent provides that process may be served on Deutsche Bank through service on Deutsche Bank's New York branch (or other branch of Deutsche Bank that is domiciled in the United States).

11. In summary, the Applicant represents that the subject transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) Deutsche Bank has, as of the last day of its most recent fiscal year, equity capital in excess of $10,000,000;

(b) Except for the fact that Deutsche Bank is not a U.S.-chartered bank, as required by section V(a)(1) of PTCE 84–14, the proposed exemption contains conditions substantially similar to those which are set forth in PTCE 84–14;

(c) The requested exemption will not impose any administrative burden on the Department which is not already imposed by PTCE 84–14;

(d) In addition to the requirements of the PTCE 84–14, Deutsche Bank has agreed to conditions, as set forth in section I(h) through (m), which are designed to ensure that the affected plans are protected;

(e) Deutsche Bank's operations are subject to significant regulation, not only by the supervisory authorities of various host countries, but by German authorities, as well;

(f) Upon request, Deutsche Bank will disclose to the plan sponsor and/or the named fiduciary of each plan affected by this exemption information concerning the nature and extent of Deutsche Bank's regulation by German governmental authorities;

(g) Upon request, Deutsche Bank will provide to each plan affected by this exemption copies of the proposed and the final exemption, if granted;

(h) The proposed exemption will broaden the choice of qualified independent assets managers available to the affected plans, will increase transactional efficiencies, and will afford greater opportunities to such plans to diversify through international investments; and

(i) Without the proposed exemption, plans might lose opportunities to enter into beneficial financial transactions with parties in interest that would enhance the return to such plans.

Notice to Interested Persons

Deutsche Bank will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement (the Supplemental Statement), as described at 29 CFR § 2570.43(b)(2), to the an independent fiduciary for each plan to which Deutsche Bank currently provides investment management services to inform such persons of the pendency of this proposed exemption. A copy of the Notice, as it appears in the **Federal Register**, and a copy of the Supplemental Statement, will be provided, by first class mailing, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due from interested persons on or before 45 days from the date of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (this is not a toll-free number).

EquiLend LLC (EquiLend), Located in New York, New York

[Exemption Application No.: D–11026]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 8477(c)(3) of the Federal Employees' Retirement System Act of 1986 (FERSA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Sale of EquiLend Products to Plans

If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply to the sale or licensing of certain data and/or analytical tools to an employee benefit plan by EquiLend, a party in interest with respect to such plan, if the following conditions are met:

(a) The terms of any such sale or licensing are at least as favorable to the plan as the terms generally available in an arm's-length transaction involving an unrelated party;

(b) Any data sold/licensed to the plan will be limited to:

(1) Current and historical data related to transactions proposed or occurring on EquiLend's electronic securities lending platform (the Platform) or,

(2) Data derived from current and historical data using statistical or computational techniques; and

(c) Each analytical tool sold/licensed to the plan will be an objective statistical or computational tool designed to permit the evaluation of securities lending activities.

Section II. Use of Platform by Owner Lending Agent/ Sale of EquiLend Products to Plans Represented by Owner Lending Agent

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act, section 8477(c)(2) of FERSA, and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to: (1) The participation in the Platform by an equity owner of EquiLend (an Equity Owner), in its capacity as a securities lending agent for a plan (an Owner Lending Agent); and (2) the sale or licensing of certain data and/or analytical tools by EquiLend to a plan for which an Equity Owner acts as a securities lending agent, if the following conditions are met:

(a) In the case of participation in the Platform on behalf of a plan, to the extent applicable the procedures regarding the securities lending activities conform to the provisions of Prohibited Transaction Class Exemption (PTE) 81–6 (46 FR 7527 (Jan. 23, 1981)), PTE 82–63 (46 FR 14804 (Apr. 6, 1982)), and/or any applicable individual exemption;

(b) None of the fees imposed by EquiLend for securities lending transactions conducted through the use of the Platform at the direction of an Owner Lending Agent will be charged to a plan;

(c) Each securities lender and securities borrower participating in a securities lending transaction through EquiLend will be notified by EquiLend as to its responsibilities with respect to compliance, as applicable, with the Act, the Code, and FERSA;

(d) EquiLend will not act as a principal in any securities lending transaction involving plan assets;

(e) Each Owner Lending Agent will provide prior written notice to its plan clients of its intention to participate in EquiLend;

(f) (1) Except as otherwise provided in paragraph (i), the arrangement pursuant to which the Owner Lending Agent utilizes the services of EquiLend on behalf of a plan for securities lending:

(A) Is subject to the prior written authorization of an independent fiduciary (''an authorizing fiduciary'' as defined in paragraph (b) of section III). For purposes of subparagraph (f)(1), the requirement that the authorizing fiduciary be independent shall not apply in the case of a plan of an Equity Owner (Equity Owner Plan);

(B) May be terminated by the authorizing fiduciary, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent, or (ii) five business days.

Notwithstanding the foregoing, the requirement for prior written authorization will be deemed satisfied in the case of any plan for which the authorizing fiduciary has previously provided written authorization to the Owner Lending Agent pursuant to PTE 82–63, unless such authorizing fiduciary objects to participation in the Platform in writing to the Owner Lending Agent within 30 days following disclosure of the information described in paragraphs (e) and (g) of this section to such authorizing fiduciary; and

(2) Except as otherwise provided in paragraph (i), each purchase or license of a securities lending-related product from EquiLend on behalf of a plan by an Owner Lending Agent:

(A) Is subject to the prior written authorization of an authorizing fiduciary. For purposes of subparagraph (f)(2), the requirement for prior written authorization shall not apply to any purchase or licensing of an EquiLend securities lending-related product by an Equity Owner Plan if the fee or cost associated with such purchase or licensing is not paid by the Equity Owner Plan; and

(B) May be terminated by the authorizing fiduciary within (i) the time negotiated for such notice of termination by the plan and the Owner Lending Agent or (ii) five business days, whichever is lesser, in either case without penalty to the plan, provided that, such authorizing fiduciary shall be deemed to have given the necessary authorization in satisfaction of this paragraph (f)(2) with respect to each specific product purchased or licensed pursuant thereto unless such authorizing fiduciary objects to the Owner Lending Agent within 15 days after the delivery of information regarding such specific product to the authorizing fiduciary in accordance with paragraph (g) of this exemption;

(g) The authorization described in paragraph (f) of this section shall not be deemed to have been made unless the Owner Lending Agent has furnished the authorizing fiduciary with any reasonably available information that the Owner Lending Agent reasonably believes to be necessary for the

authorizing fiduciary to determine whether such authorization should be made, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request. This includes, but is not limited to: (1) A statement that the Equity Owner, as securities lending agent, has a financial interest in the successful operation of EquiLend, and (2) a statement, provided on an annual basis, that the authorizing fiduciary may terminate the arrangement(s) described in (f) above at any time;

(h) Any purchase or licensing of data and/or analytical tools with respect to securities lending activities by a plan pursuant to this section complies with the relevant conditions of section I and will be authorized in advance by an authorizing fiduciary in accordance with the applicable procedures of paragraphs (f), (g) and (i);

(i) (Special Rule for Commingled Investment Funds) In the case of a pooled separate account maintained by an insurance company qualified to do business in a state or a common or collective trust fund maintained by a bank or trust company supervised by a state or federal agency (Commingled Investment Fund), the requirements of paragraph (f) of this section shall not apply, provided that—

(1) The information described in paragraph (g) (including information with respect to any material change in the arrangement) of this section and a description of the operation of the Platform (including a description of the fee structure paid by securities lenders and borrowers), shall be furnished by the Owner Lending Agent to the authorizing fiduciary (described in paragraph (b) of section III) with respect to each plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of any such arrangement or material changes thereto, or, not less than 15 days prior to the purchase or license of any specific securities lending-related product, and, where requested, upon the reasonable request of the authorizing fiduciary. For purposes of this subparagraph, the requirement that the authorizing fiduciary be independent shall not apply in the case of an Equity Owner Plan;

(2) In the event any such authorizing fiduciary notifies the Owner Lending Agent that it objects to participation in the Platform, or to the purchase or license of any EquiLend securities lending-related tool or product, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement or purchase or license, but any existing arrangement need not be discontinued by reason of a plan electing to withdraw; and

(3) In the case of a plan whose assets are proposed to be invested in the pooled account or fund subsequent to the implementation of the arrangements and which has not authorized the arrangements in the manner described in paragraphs (i)(1) and (i)(2), the plan's investment in the account or fund shall be authorized in the manner described in paragraph (f);

(j) The Equity Owner, together with its affiliates (as defined in paragraph (a) of section III), does not own at the time of the execution of a securities lending transaction on behalf of a plan by the Equity Owner (i.e., in its capacity as Owner Lending Agent) through EquiLend or at the time of the purchase, or commencement of licensing, of data and/or analytical tools by the plan, more than 20% of:

(1) If EquiLend is a corporation, including a limited liability company taxable as a corporation, the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of EquiLend, or

(2) If EquiLend is a partnership, including a limited liability company taxable as a partnership, the capital interest or the profits interest of EquiLend;

(k) Any information, authorization, or termination of authorization may be provided by mail or electronically; and

(l) No Equity Owner Plan, as defined in section III(e) below, will participate in the Platform, other than through a Commingled Investment Fund in which the aggregate investment of all Equity Owner Plans at the time of the transaction constitutes less than 20% of the total assets of such fund. Notwithstanding the foregoing, this prohibition shall not apply to the participation by an Equity Owner Plan as of the date that the aggregate loan balance of all securities lending transactions entered into through EquiLend by all participants outstanding on such date (excluding transactions entered into on behalf of Equity Owner Plans) is equal to or greater than $10 billion; provided that if such aggregate loan balance is later determined to be less than $10 billion, no additional participation by an Equity Owner Plan (other than through a Commingled Investment Fund) shall occur until such time as the $10 billion threshold amount is again met.

Section III. Definitions

For purposes of this exemption:

(a) An ''affiliate'' of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term ''authorizing fiduciary'' means, with respect to an Owner Lending Agent, a plan fiduciary who is unrelated to, and independent of, such Owner Lending Agent. In this regard, an authorizing fiduciary will not be considered independent of an Owner Lending Agent if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Owner Lending Agent; or

(2) Such fiduciary directly or indirectly receives any compensation or other consideration from the Owner Lending Agent or an affiliate for his or her own personal account in connection with any securities lending transaction described herein.

For purposes of section II, no Equity Owner or any affiliate may be an authorizing fiduciary. Notwithstanding the foregoing, the requirements for consent by an authorizing fiduciary with respect to participation in the Platform, and the annual right of such fiduciary to terminate such participation, shall be deemed met to the extent that the Owner Lending Agent's proposed utilization of the services of EquiLend on behalf of a plan for securities lending has been approved by an order of a United States district court.

(c) The term ''Owner Lending Agent'' means a fiduciary of a plan acting as securities lending agent in connection with loans of plan assets that are securities.

(d) The term ''Equity Owner'' means an entity that either directly or through an affiliate owns an equity ownership interest in EquiLend.

(e) The term ''Equity Owner Plan'' means an employee benefit plan, as defined under section 3(3) of the Act, which is established or maintained by an Equity Owner of EquiLend, as defined in section III(d) above, as an employer of employees covered by such plan, or by its affiliate.

(f) The terms ''employee benefit plan'' and/or ''plan'' means:

(1) An ''employee benefit plan'' within the meaning of section 3(3) of the Act subject to Part 4 of Subtitle B of Title I of the Act,

(2) A ''plan'' (within the meaning of section 4975(e)(1) of the Code) subject to section 4975 of the Code, or

(3) The Federal Thrift Savings Fund.

Summary of Facts and Representations

1. EquiLend is a Delaware limited liability company established on May 16, 2001. As of October 17, 2001, the Equity Owners of EquiLend were as follows: Barclays California Corporation; Bear Stearns Securities Corp.; JP Morgan Strategic Securities Lending Corp. (a wholly owned subsidiary of The Chase Manhattan Bank); LB I Group Inc. (a wholly owned subsidiary of Lehman Brothers Inc.); Merrill Lynch, Pierce, Fenner & Smith Inc.; SSB Investments, Inc. (a wholly owned subsidiary of State Street Corporation); Strategic Investments I, Inc. (a wholly owned subsidiary of Morgan Stanley Dean Witter & Co.); The Goldman Sachs Group, Inc.; Northern Trust Corporation and UBS (USA) Inc., or affiliates of the foregoing entities. The applicant represents that, as of October 17, 2001, each Equity Owner owned 10 percent of EquiLend.

2. EquiLend intends to provide the Platform, a common electronic platform for the negotiation of securities lending and borrowing transactions.[8] The applicant represents that securities lending transactions involving the use of the Platform will not change the fundamental nature of how securities lending transactions are currently conducted. In this regard, the applicant states that most securities owners use a custodian bank, asset manager, or non-custodian lending agent to lend securities. The lending agent is typically responsible for, among other things, identifying borrowers, negotiating loan transactions, maintaining the appropriate records, marking to market all outstanding loans, ensuring the maintenance of collateral, and monitoring the delivery and control of the collateral.

The applicant represents that the Platform will provide a tool for lending agents to fulfil the above-mentioned responsibilities. In this regard, the Platform will include:

(A) An interactive screen;

(B) Screens for trade negotiations, auctions, auto-borrowing, rate posting, loan returns, recalls by lenders, and inventory broadcasts (posting of securities available for lending);

(C) Additional services such as the comparison of a transaction as reflected on lender and borrower books with the underlying contract and the identification of the differences between lender and borrower records, including mark to market comparisons and fee billing comparisons;

(D) The disclosure of the identity of counterparties to a transaction whereby members will have the ability to direct trades and control inventory broadcasts;

(E) The reflection of agreed transaction terms on a shared electronic trade ticket in a form for automated input to members' systems; and

(F) The creation of securities lending indices to assist in the benchmarking of the performance of securities lending agents.

3. The applicant states that, in providing these services, EquiLend will not be a principal in any securities lending transaction and will not guarantee any transaction executed through the Platform. In addition, the applicant states that employee benefit plans will not pay any fees to EquiLend in connection with securities lending transactions conducted through the use of the Platform. In this regard, the fees charged by EquiLend will be paid by, and will be the same for, securities lending agents and securities borrowers.

The fees charged by EquiLend are expected to include an annual fee and a one-time initiation fee; both of which will be structured on a tiered basis to allow for the participation in EquiLend by entities of varying sizes. Each level of the annual fees will entitle the member to a certain number of transactions and, thereafter, excess transactions will be subject to additional charges. The applicant represents that, although the Equity Owners will pay the same annual fees as non-owners, no such owner will pay the initiation fee.

4. The applicant states that, in addition to compliance with the terms of this proposed exemption, lenders and borrowers utilizing EquiLend services will remain responsible for compliance with other relevant laws and exemptions. In this regard, each securities lending transaction involving the use of the Platform by an Equity Owner as Owner Lending Agent will remain subject to all relevant provisions of the Act, the Code, and FERSA, as well as any applicable individual or class exemption (including but not limited to PTEs 81–6 and 82–63). In the event that a particular securities lending transaction does not comply with any applicable law and/or exemption, the relief contained in this exemption, if granted, will no longer be available with respect to such transaction.

5. The applicant anticipates that many of the entities currently conducting securities lending and borrowing transactions, including banks, broker-dealers and investment managers, will become members of EquiLend. The applicant anticipates that an entity participating in EquiLend and/or its Platform must, among other things:

(A) Be qualified in its jurisdiction to engage in securities lending transactions through EquiLend and be subject to an appropriate level of regulatory supervision (as determined by EquiLend);

(B) Execute a ''User Agreement'' which shall set forth the terms and conditions for access to, and use of, EquiLend's platform and which shall contain appropriate representations, warranties and indemnities from the participant, including those typically provided by users of electronic trading platforms; and

(C) Have the ability to pay all applicable EquiLend fees;

(D) Have the ability to originate a certain number of loans per month having a certain aggregate US dollar nominal value (which number and nominal value will be set prior to EquiLend's launch at levels designed to ensure that the applicant is a legitimate participant in the securities lending marketplace); and

(E) In order to remain a member in good standing, meet or exceed the levels described in (D) of this paragraph. The applicant notes that no Equity Owner Plan will participate in the Platform except to the extent that such Plan participates in a commingled fund having less than 20% of its assets comprised of one or more Equity Owner Plans.

6. The applicant represents that an Equity Owner may be a party to transactions involving EquiLend sales

[8] The proposed exemption does not provide relief under Section I from section 406(a) of the Act with respect to the use of the Platform on behalf of a plan by a lending fiduciary which is not an Equity Owner. In this regard, based on the representations made by the applicant, any relief from section 406(a) that may be necessary in such a situation is provided by the statutory exemption for the provision of services to a plan by a party in interest contained in section 408(b)(2) of the Act.

and/or services. In this regard, each Equity Owner may conduct securities lending transactions on behalf of a plan, in its capacity as an Owner Lending Agent, through EquiLend to the extent that such Equity Owner does not own more than 20% of EquiLend. The applicant represents that plans will not incur any incremental cost as a result of an Owner Lending Agent conducting such transactions through EquiLend.

The applicant states that to the extent an Owner Lending Agent lends plan-owned securities through EquiLend, plan participants will be adequately protected. In this regard, the applicant represents that prior to such an arrangement, each Owner Lending Agent will disclose to a plan's authorizing fiduciary (who is independent of the Owner Lending Agent and EquiLend) that such Owner Lending Agent intends to participate in the Platform. In addition, each Owner Lending Agent will disclose all of the information that the Owner Lending Agent believes is necessary for the authorizing fiduciary to determine whether the arrangement should be approved.[9] Thereafter, the applicant states, the plan's authorizing fiduciary must authorize the Owner Lending Agent's use of the Platform to lend securities on behalf of such plan. This authorization may be terminated by the authorizing fiduciary, the applicant states, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent, or (ii) five business days.[10]

7. In addition to providing the Platform discussed above, EquiLend intends to sell and/or license data. In this regard, the applicant represents that such data: (A) Will be historical in nature and will relate to transactions proposed or occurring on the system; or (B) will be derived from current and historical data utilizing statistical or computational techniques. EquiLend also intends to sell or license certain analytical tools. Such analytical tools, the applicant states, will be objective statistical or computational tools that will permit users to use data provided to evaluate securities lending activities.

The applicant represents that EquiLend seeks to sell and/or license such data and tools to various types of entities, including employee benefit plans. In this regard, the applicant states that, if this proposed exemption is granted, to the extent EquiLend sells or licenses data and/or analytical tools to a plan with respect to which EquiLend is a party in interest, the terms of such sale or licensing will be at least as favorable to such plan as the terms associated with an arm's-length transaction involving unrelated parties. In addition, the applicant represents that if EquiLend sells or licenses a product to a plan with respect to which an Equity Owner acts as an Owner Lending Agent, such sale or licensing will be authorized in advance by a fiduciary who is independent of both EquiLend and the Owner Lending Agent upon such fiduciary's receipt from the Owner Lending Agent of all of the information that the Owner Lending Agent believes is necessary for the authorizing fiduciary to approve the purchase or license.

8. The applicant represents that the proposed exemption, if granted, will benefit plans. In this regard, the applicant states that the use of the Platform by lending fiduciaries will enable plans to, among other things, communicate with multiple borrowers, devise and implement more efficient lending strategies, and monitor ongoing securities loan activities. In turn, affected plans may benefit from more efficient pricing, reduced execution costs, streamlined front and back-office activities, less failed trades and more on-going information regarding lending activities. In addition, according to the applicant, if EquiLend sells or licenses data related to securities lending activities and provides related analytical tools to plans, plans will have access to information that will permit the enhanced evaluation of the performance of lending agents and the returns on lending portfolios.

9. In summary, the applicant represents that the requirements of section 408(a) of ERISA will be met with respect to the sale or licensing of certain data and/or analytical tools to employee benefit plans by EquiLend since: the terms of any such sale or licensing will be at least as favorable to a plan as the terms generally available in an arm's-length transaction involving an unrelated party; any data sold/licensed to a plan will be current and historical data related to transactions proposed or occurring on the Platform; and any tool sold/licensed will be objective and designed to permit the evaluation of securities lending transactions.

In addition, the applicant represents that the requirements of section 408(a) of ERISA will be met with respect to: (1) The participation in the Platform by an Equity Owner, in its capacity as an Owner Lending Agent; and (2) the sale or licensing of certain data and/or analytical tools by EquiLend to a plan for which an Equity Owner acts as a securities lending agent because, among other things:

(A) In the case of participation in the Platform on behalf of a plan, to the extent applicable the procedures regarding the securities lending activities conform to the provisions of PTE 81–6, PTE 82–63, and/or any applicable individual exemption;

(B) None of the fees imposed by EquiLend for securities lending transactions conducted through the use of the Platform at the direction of an Owner Lending Agent will be charged to a plan;

(C) Each securities lender and securities borrower participating in a securities lending transaction through EquiLend will be notified by EquiLend as to its responsibilities with respect to compliance, as applicable, with the Act, the Code, and FERSA;

(D) Each Equity Owner will provide prior written notice to its plan clients of its intention to participate in EquiLend;

(E) With certain exceptions described above, the arrangement pursuant to which the Equity Owner utilizes the services of EquiLend on behalf of a plan:

(1) Is subject to the prior written authorization of an authorizing fiduciary;

(2) May be terminated by the authorizing fiduciary, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Equity Owner, or (ii) five business days;

(F) With certain exceptions described above, each purchase or license of a securities lending-related product from EquiLend is subject to the prior

[9] The Department notes that the Act's general standards of fiduciary conduct also would apply to the proposed service and compensation arrangements. In this regard, section 404 requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent plan fiduciary must act prudently with respect to: (1) The decision to enter into an above-described arrangement; and (2) the negotiation of the terms of such arrangement including any payment of compensation. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed service and compensation arrangements, to fully understand the extent of the services to be provided, the fee structure and the risks associated with these types of arrangements following disclosure by the service provider of all relevant information. In addition, the Department notes that such plan fiduciaries are responsible for periodically monitoring the services provided.

[10] However, with respect to any plan for which the authorizing fiduciary has previously given written authorization to the Owner Lending Agent pursuant to PTE 82–63, the applicant requests that such authorizing fiduciary be deemed to have given the required authorization unless such authorizing fiduciary objects in writing to participation in the Platform to the Owner Lending Agent within 30 days after disclosure of the information described above.

authorization of an authorizing fiduciary;

(G) The Equity Owner will furnish each authorizing fiduciary with any reasonably available information which the Equity Owner reasonably believes to be necessary to determine whether such authorization should be made or renewed; and

(H) The Equity Owner, together with its affiliates, does not own at the time of the execution of a securities lending transaction on behalf of a plan by the Equity Owner through EquiLend or at the time of the purchase, or commencement of licensing, of data and/or analytical tools by the plan, more than 20% of EquiLend.

Notice to Interested Persons: The applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 35 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Morgan Stanley Dean Witter & Co., Located in New York, New York

[Exemption Application No.: D–11048]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures as set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[11]

Section I—Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 13, 2001, to:

(a) The lending of securities by an employee benefit plan, including a commingled investment fund holding assets of such plan(the Plan(s)) with respect to which Morgan Stanley Dean Witter & Co. (Morgan Stanley) or any of its affiliates is a party in interest, under certain exclusive borrowing arrangements with:

(1) Morgan Stanley;

(2) Morgan Stanley & Co. Incorporated (MS&Co); MS Securities Services Inc. (MSSSI); and any other affiliate of Morgan Stanley that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer (collectively, the MS US Broker-Dealers);

(3) Morgan Stanley & Co. International Limited (MSIL), which is subject to regulation by the Financial Services Authority (FSA)in the United Kingdom;[12]

(4) Morgan Stanley Japan Limited (MSJL), which is subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan; and

(5) Any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the FSA in the United Kingdom or which is subject to regulation by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan;[13] and

(b) The receipt of compensation by Morgan Stanley or any of its affiliates in connection with securities lending transactions; provided that for the transactions, set forth in section I(a) and (b), above, the conditions set forth in section II, below, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over such Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to such Plan (including a fiduciary) solely by reason of providing services to such Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with the Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by the Plan to the Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower an exclusive right to borrow certain securities, the Plan receives from such Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower pledges cash collateral, all the earnings generated by such cash collateral shall be returned to such Borrower; provided that such Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by such Plan, or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower pledges non-cash collateral, all earnings on the non-cash collateral shall be returned to such Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee, and together with the Shared Earnings Compensation, is referred to as the Transaction Lending Fee). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against the Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of such Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change,

[11] For the purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[12] As of December 1, 2001, the FSA replaced the United Kingdom Securities and Futures Authority.

[13] Each affiliated foreign broker-dealer is referred to herein, individually, as a Foreign Borrower or collectively, as Foreign Borrowers. The Foreign Borrowers together with Morgan Stanley and the MS US Broker-Dealers are referred to, herein, collectively as Borrowers or Applicants, and individually, as the Borrower.

prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan receives from such Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank, other than the Borrower or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (as amended or superseded)(PTE 81–6).[14]

Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or custodian of the Plan.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent (102%) of the market value of the loaned securities on the close of business on the day preceding the day of the loan and, if the market value of the collateral at any time falls below 100 percent (100%) (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent (102%). The level of the collateral is monitored daily by the Plan or its designee, which may be Morgan Stanley or any of its affiliates which provides custodial or trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The applicable Borrowing Agreement shall give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether such Plan should enter into or renew the Borrowing Agreement.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that such Plan would have received (net of tax withholdings)[15] had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a *pro-rata* portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five (5) business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, the United Kingdom and/or Japan, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has

[14] 46 FR 7527, Jan. 23 1981, as amended at 52 FR 18754, May 19, 1987). PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

[15] The Department notes the Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of the notice of proposed exemption, and a copy of the final exemption, if granted, is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[16]

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in this paragraph, so that an independent Plan fiduciary may monitor such transactions with the Borrowers. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a registered broker-dealer subject to regulation by the FSA in the United Kingdom or is subject to regulation in Japan by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act which provides foreign broker-dealers a limited exception from United States registration requirements;

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 (as amended or superseded) from time to time;

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 C.F.R. 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

(s) The Borrower maintains, or causes to be maintained, within the United States for a period of six (6) years from the date of each transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Morgan Stanley and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized to examine the trade secrets of Morgan Stanley or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An ''affiliate'' of a person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) Any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

(b) The terms, ''Foreign Borrower'' or ''Foreign Borrowers,'' includes MSIL and any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the FSA in the United Kingdom, and MSJL, and any broker-dealer that, now or in the future, is an affiliate of Morgan

[16] The Department notes the Applicants' representation that, under the proposed exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.,* the Applicants will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Applicants or their affiliates may monitor the level of collateral and the value of the loaned securities.

Stanley which is subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan.

(c) The term, ''Borrower,'' includes Morgan Stanley, MS&Co, MSSSI, the Foreign Borrowers, and any other affiliate of Morgan Stanley that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer.

Effective Date: This proposed exemption, if granted, will be effective as of November 11, 2001, the date the application was received by the Department.

Summary of Facts and Representations

1. Morgan Stanley, a publicly traded Delaware corporation and a registered investment adviser, is a full-line investment services firm. As of November 30, 2000, Morgan Stanley had approximately $426.8 billion in total assets and $19.3 billion in stockholders' equity.

Morgan Stanley has several affiliates which are broker-dealers. MS&Co, a subsidiary of Morgan Stanley, is a financial services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and is a member of the National Association of Securities Dealers (NASD). MS&Co is incorporated under the laws of the State of Delaware and is registered with and regulated by the SEC as a U.S. broker-dealer under section 15 of the 1934 Act. As of May 31, 2001, MS&Co had approximately $299 billion in assets.

MSSSI, a subsidiary of MS&Co, is a financial services company which is incorporated under the laws of the state of Delaware and is registered with and regulated by the SEC as a broker-dealer under the 1934 Act, as amended, and is also a member of the NASD. As of November 20, 2000, MSSSI had approximately $47 billion in assets.

The Foreign Borrowers and their respective regulating entities, are as follows: (a) MSIL, located in London and subject to regulation by the FSA in the United Kingdom, and (b) MSJL, located in Tokyo, and subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan. As of November 30, 2000, MSIL had approximately $194 million in assets. As of March 31, 2001, MSJL Tokyo Branch had approximately ¥5,560 billion in assets.

2. The Borrowers, acting as principal, actively engage in the borrowing and lending of securities. The Borrowers utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. The Applicants represent that in the United States, as described in the Federal Reserve Board's Regulation T, borrowed securities are often used in short sales, for non-purpose loans to exempted borrowers, or in the event of a failure to receive securities that a broker-dealer is required to deliver.

The Applicants wish to enter into exclusive borrowing arrangements with Plans for which Morgan Stanley or any affiliate of Morgan Stanley may be an investment manager for the assets of such Plans that are unrelated to the assets involved in the transaction. Morgan Stanley or any of its affiliates may provide securities custodial services, trustee services, clearing and/or reporting functions in connection with securities lending transactions, or other services to such Plans.

3. The Applicants represent that although MSIL or any other foreign broker-dealer of Morgan Stanley in the United Kingdom will not be registered with the SEC, their activities are governed by the rules, regulations, and membership requirements of the FSA. In this regard, the Applicants state that these broker-dealers are subject to the FSA rules relating to, among other things, minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules, and books and records requirements with respect to client accounts. The Applicants represent that the rules and regulations set forth by the FSA and the SEC share a common objective—the protection of the investor by the regulation of the securities industry. The Applicants represent that the FSA rules require each firm which employs registered representatives or registered traders to have positive tangible net worth and to be able to meet its obligations as they may fall due, and that the FSA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition, to demonstrate capital adequacy, the Applicants state that the FSA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and record-keeping requirements. In this regard, required records must be produced at the request of the FSA at any time. The Applicants further state that the rules and regulations of the FSA for broker-dealers are backed up by potential fines and penalties as well as a comprehensive disciplinary system.

4. Japan has comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counter-parties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system.

5. The Applicants represent that in addition to the protections afforded by the FSA, the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, or the Osaka Stock Exchange, compliance by the Applicants with the requirements of Rule 15a–6 of the 1934 Act (and the amendments and interpretations thereof) will offer further protections to the Plans.[17] Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if: (a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company, or registered

[17] According to the Applicants, section 3(a)(4) of the 1934 Act defines ''broker,'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank.'' Section 3(a)(5) of the 1934 Act provides a similar exclusion for ''banks'' in the definition of the term, ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15a–6(b)(3) provides that the term, ''foreign broker-dealer,'' means ''any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the [1934] Act.'' Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term, ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, the Applicants are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term, ''major U.S. institutional investor,'' is defined as a person that is a U.S. institutional investor that has, or has under management, total assets in excess of $100 million or an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[18] The Applicants represent that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicants represent that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 [19] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to the transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating the terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); [20] and

(6) Participate in certain oral communications (*e.g.,* telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. The Applicants represent that, under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor.[21] (See April 9, 1997, No-Action Letter.)

6. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities (*e.g.,* from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. If the borrower deposits cash collateral, the lender invests the collateral, and the borrowing agreement may provide that the lender pay the borrower a previously-agreed upon amount or a rebate fee and keep the earnings on the collateral. If the borrower deposits government securities, the borrower is entitled to the earnings on its deposited securities and may pay the lender a lending fee. If the borrower deposits irrevocable bank letters of credit as collateral, the borrower pays the lender a fee as compensation for the loan of its securities. These fees, referred to above, as the Transaction Lending Fee, may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement.

7. The Borrowers request an exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which Morgan Stanley or any of its affiliates is a party in interest (including a fiduciary) solely by reason of providing services to such Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act. For each Plan, neither the Borrowers nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. The Applicants represent that because the Borrowers, by exercising their contractual rights under the proposed exclusive borrowing arrangements, will have discretion with respect to whether there is a loan of particular Plan securities to the Borrowers, the lending of securities to the Borrowers may be outside the scope of relief provided by PTE 81–6.[22]

8. For each Plan, the Borrowers will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of the Borrowers. Under the Borrowing Agreement, the Borrowers will have exclusive access for a specified period of time to borrow certain securities of the Plan pursuant to certain conditions. The form of the Borrowing Agreement to be used in foreign jurisdictions will reflect appropriate local industry or market standards.[23] The Borrowing Agreement

[18] Note that the categories of entities that qualify as ''major U.S. institutional investors'' has been expanded by a Securities and Exchange Commission No-action letter. See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997, (April 9, 1997 No-Action Letter).

[19] If it is determined that applicable regulation under the 1934 Act does not require Morgan Stanley or the Borrower to comply with Rule 15a–6, both entities will nevertheless comply with subparagraphs (a) and (b) of Representation 5.

[20] Under certain circumstances described in the April 9, 1997, No-Action Letter (*e.g.,* clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and Morgan Stanley or between a Plan and the Foreign Borrower. The Applicants note that in such situations, the U.S. registered broker-dealer will not be acting as principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[21] The term ''foreign associated person'' as defined in Rule 15a–6(b)(2) means any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the 1934 Act, of the foreign broker-dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under Rule 15a–6(a)(3).

[22] PTE 81–6 requires in part that neither the borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the plan assets involved in the transaction.

[23] For example, the form of the Borrowing Agreement to be used in the United Kingdom differs from the standard U.S. Borrowing Agreement. Under the form Borrowing Agreement

Continued

will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that the Borrowers pay all transfer fees and transfer taxes relating to the securities loans. The terms of each loan of securities by a Plan to a Borrower will be at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

9. The Borrowers may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

10. In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives an Exclusive Fee from the Borrower. If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan to Shared Earnings Compensation. If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a Lending Fee. The Lending Fee, together with the Shared Earnings Compensation, is called the Transaction Lending Fee.

The Transaction Lending Fee, if any, may be in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. For example, in addition to the Borrower paying different fees for different portfolios of securities (*i.e.*, the fee for a domestic securities portfolio may be different than the fee for a foreign securities portfolio), the Borrower may also pay different fees for securities of issuers in different foreign countries (i.e., there may be a different fee for German securities than for French securities). In addition, with respect to, for example, the French securities, there may be different fees for liquid securities than for illiquid securities.

Any change in, or a change in the method of determining, the Exclusive Fee or the Transaction Lending Fee that the Applicants pay to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

The Plan is entitled to the equivalent of all distributions made to holders of the borrowed securities during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities that the Plan would have received (net of tax withholdings in the case of foreign securities), had it remained the record owner of the securities.

11. By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan will receive from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by U.S. banks, or other collateral permitted under PTE 81–6 (as amended or superseded). Such collateral will be deposited and maintained in an account on behalf of the Plan which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or custodian of the Plan.

The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Plan, its independent fiduciary or its designee, which may be Morgan Stanley or any of its affiliates which provides custodial or trustee services in respect of the securities covered by the Borrowing Agreement for the Plan, will monitor the level of the collateral daily and, if the market value of the collateral on the close of a business day falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities at the close of business on such day, the Borrower will deliver additional collateral by the close of business on the following day to bring the level of the collateral back to at least 102 percent. The applicable Borrowing Agreement will give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

If the Borrower pledges cash collateral, the Plan invests the collateral, and all earnings on such cash collateral shall be returned to the Borrower; provided that the Borrowing Agreement may provide that the Plan receive Shared Earnings Compensation, which, as discussed above, may be a percentage of the earnings on the collateral which may be retained by the Plan or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral. The terms of the rebate fee for each loan will be at least as favorable to the Plan as those of comparable arm's length transactions between unrelated parties taking into account the exclusive arrangement, and will be based upon an objective methodology which takes into account several factors, including potential demand for the loaned securities, the applicable benchmark cost of fund indices (typically, the U.S. Federal Funds rate established by the U.S. Federal Reserve System (the Federal Funds), the overnight REPO [24] rate, or the like) and the anticipated investment return on overnight investments permitted by the independent fiduciary of the Plan.

If the Borrower pledges non-cash collateral, such as government securities or irrevocable bank letters of credit, the Borrower shall be entitled to the earnings on its non-cash collateral; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a Lending Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and

to be used in the United Kingdom, the Plan receives title to (rather than a pledge of or a security interest in) the collateral.

[24] An overnight REPO is an overnight repurchase agreement that is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by banks lending funds to each other).

may be different for different securities or different groups of securities subject to the Borrowing Agreement.

The Borrower will provide a monthly report to the independent fiduciary of the Plan which includes the following information. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

12. Before entering into a Borrowing Agreement, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement. Further, the Borrowing Agreement will contain a representation by the Borrower that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statements.

13. Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of the notice of proposed exemption and a copy of the final exemption, if granted, will be provided to the Plan, and the Borrower will inform the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.

14. With regard to those Plans for which Morgan Stanley or any of its affiliates provides custodial, trustee, clearing and/or reporting functions relative to securities loans, Morgan Stanley and a Plan fiduciary independent of Morgan Stanley and its affiliates will agree in advance and in writing to any fees that Morgan Stanley or any of its affiliates is to receive for such services. Such fees, if any, would be fixed fees (*e.g.,* Morgan Stanley or any of its affiliates might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services or to receive a stated dollar amount) and any such fee would be in addition to any fee Morgan Stanley or any of its affiliates has negotiated to receive from any such Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for Morgan Stanley or any of its affiliates to provide such functions relative to securities loans to the Borrowers will be terminable by the Plan within five (5) business days of the receipt of written notice without penalty to the Plan, except for the return to the Borrowers of a *pro-rata* portion of the Exclusive Fee paid by the Borrowers to the Plan, if the Plan has also terminated its exclusive borrowing arrangement with the Borrowers.

15. The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty. Upon termination of any securities loan, the Borrower will deliver securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five (5) business days of written notice of termination or the customary settlement period for such securities.

16. In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans or failure by the Borrower to properly indemnify the Plan.

17. Except as provided herein, all the procedures under the Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, the United Kingdom and/or Japan, as appropriate. In addition, in order to ensure that the independent fiduciary representing a Plan has the experience, sophistication, and resources necessary to adequately review the Borrowing Agreement and the fee arrangements thereunder, only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers; provided, however, that—

(a) In the case of the Related Plans, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(b) In the case of the Unrelated Plans, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

18. It is represented that the lending of securities is an attractive investment opportunity because it enables the owner of the securities to earn additional income from the securities while continuing to receive the dividends, interest payments, and other

distributions made with respect to the loaned securities. The Applicants represent that the opportunity for the Plans to enter into exclusive borrowing arrangements with the Borrowers under the flexible fee structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the volume of securities lent and the return on such securities.

19. The proposed transaction contain safeguards sufficient to protect the Plans and the participants and beneficiaries of such Plans. In this regard, in addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(i) Such Foreign Borrower is a registered broker-dealer subject to regulation by the FSA or the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, or the Osaka Stock Exchange;

(ii) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act which provides foreign broker-dealers a limited exception from United States registration requirements;

(iii) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 from time to time;

(iv) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(v) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint a Process Agent for service of process in the United States, which may be an affiliate;

(3) Consent to the service of process on the Process Agent; and

(4) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

20. In addition to the protections cited above, the Borrower will maintain, or cause to be maintained, within the United States for a period of six years from the date of a transaction, such records as are necessary to enable the Department and other persons (as specified herein in section II(t)(1)) to determine whether the conditions of the exemption have been met.

21. The requested exemption is administratively feasible because the conditions to which the Applicants have consented to be subject are comparable to those described in PTE 81–6. The proposed exemption requires the review and approval of the borrowing arrangement by a fiduciary of the Plan that is independent of Morgan Stanley and its affiliates and does not require any further action by the Department.

22. In summary, the Applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Borrower will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan;

(b) The Plans will be permitted to lend to the Borrower, a major securities borrower who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities;

(c) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower will pay the Plan the Exclusive Fee, which as discussed above may be either (i) a flat fee (which may be a percentage of the value of the total securities subject to the Borrowing Agreement), (ii) a percentage of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii);

(d) Any change in the Exclusive Fee or Shared Earnings Compensation that the Borrower pays to the Plan with respect to any securities loan will require the prior written consent of the independent fiduciary, except that consent will be presumed where the Exclusive Fee or Shared Earnings Compensation changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) The Borrower will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to the Borrower;

(f) The collateral posted with respect to each loan of securities to the Borrower initially will be at least 102 percent of the market value of the loaned securities and will be monitored daily by the independent fiduciary;

(g) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, except for the return to the Borrower of a *pro-rata* portion of the Exclusive Fee paid by the Borrower to the Plan, and whereupon the Borrower will return any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five (5) business days of written notice of termination or the customary settlement period for such securities;

(h) Neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan;

(i) The minimum Plan size requirement (as specified in section II(o)) will ensure that the Plans will have the resources necessary to adequately review and negotiate all aspects of the exclusive borrowing arrangements; and

(j) All the procedures will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as applicable securities laws of the United States, the United Kingdom and/or Japan, as appropriate.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the proposed exemption are: (1) The independent fiduciaries of the Plans that the Applicants can identify as being currently interested in lending securities to the Borrowers under circumstances described in the proposed exemption; and (2) Plans which may be potentially interested in the proposed transactions but cannot be identified at the time the Notice is published in the **Federal Register**. These two classes of interested persons will be notified as follows.

With respect to Plans that the Applicants can identify as being currently interested in lending securities to the Borrowers, the Applicants represent that they will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement, described at 29 CFR 2570.43(b)(2), to the independent fiduciary of such Plan either by hand delivery or first class mailing, within fifteen (15) days following the publication of the Notice in the **Federal Register**. In addition, the Applicants represent that they will provide the independent fiduciary of such Plans a copy of the final exemption, if granted, within fifteen (15) days following the

publication of such final exemption in the **Federal Register**.

With respect to the Plans which may be potentially interested in the proposed transactions but cannot be identified at the time the Notice is published in the **Federal Register**, the only practical means of notifying the fiduciaries of such Plans of the pendency of the Notice is by publication of the Notice in the **Federal Register**.

The Applicants also represent that a copy of the Notice and a copy of the final exemption, if granted, will be provided by hand delivery or first class mailing to the independent fiduciary of a Plan prior to entering into any exclusive borrowing arrangement with such Plan involving securities lending covered by this exemption.

Written comments and/or requests for a hearing on the proposed exemption must be received by the Department on or before 45 days from the date following publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of March, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–7520 Filed 3–28–02; 8:45 am]

BILLING CODE 4510–29–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution; Agency Information Collection Activities: Submission for OMB Review; Comment Request; Program Evaluation Instruments for Five of the Institute's Program Areas

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act and supporting regulations, this document announces that the U.S. Institute for Environmental Conflict Resolution (the Institute), part of the Morris K. Udall Foundation, has forwarded to the Office of Management and Budget (OMB) the following five Information Collection Requests (ICRs): (1) Program Evaluation Instruments—Environmental Conflict Resolution Services, (2) Program Evaluation Instruments—Conflict Assessment Services, (3) Program Evaluation Instruments—National Roster of Environmental Dispute Resolution and Consensus Building Professionals, (4) Program Evaluation Instruments—Environmental Conflict Resolution Training, (5) Program Evaluation Instruments—Meeting Facilitation. Each ICR describes the authority and need for program evaluation, the nature and use of the information to be collected, the expected burden and cost to respondents and the Institute, and how the evaluation results will be made available. The ICRs also contain the specific questionnaires that will be used to collect the information for each program area. Approval is being sought for each ICR separately, and information collection will begin for each program area once the respective ICR has been approved by OMB. The Institute published a **Federal Register** notice on December 26, 2001, at 66 FR 66455, to solicit public comments for a 60-day period. The Institute received three comments. The comments and the Institute's responses are included in the ICRs. The purpose of this notice is to allow an additional 30 days for public comments regarding these ICRs.

DATES: Comments must be submitted on or before April 29, 2002.

ADDRESSES: Direct comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Amy Farrell, Desk Officer for The Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution. *Amy_L._Farrell@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Technical details of the Institute's evolving program evaluation system are contained in a December 2001 draft report entitled *Applying Program Evaluation Methods at the U.S. Institute for Environmental Conflict Resolution.* Paper copies of this report can be obtained by contacting the Institute; an electronic copy can be downloaded from the Institute's Web site: *www.ecr.gov/techdoc.htm.* For further information or a copy of the ICR, contact: Dale Keyes, Senior Program Manager, U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701. Fax: 520–670–5530. Phone: 520–670–5653. E-mail: *keyes@ecr.gov.*

SUPPLEMENTARY INFORMATION:

A. Title for the Collection of Information

Program Evaluation Instruments for Five of the U.S. Institute for Environmental Conflict Resolution's Program Areas

B. Potentially Affected Persons

You are potentially affected by this action if you are or could be a dispute resolution professional (in particular, if

you are a member of the National Roster of Environmental Dispute Resolution and Consensus Building Professionals), a user of the National Roster of Environmental Dispute Resolution and Consensus Building Professionals, a member of an organization that requests conflict assessment or environmental dispute resolution and consensus building services from the Institute, a party to an environmental consensus building or dispute resolution case for which the Institute provides services, an instructor or participant in an Institute training course, or an attendee at a meeting for which the Institute provides facilitation services.

C. Questions To Consider in Making Comments

The U.S. Institute for Environmental Conflict Resolution requests your comments to any of the following questions related to collecting information as part of its program evaluation system:

(1) Is the proposed program evaluation system and the associated ''collection of information'' necessary for the proper performance of the functions of the agency, including whether the information will have practical utility?

(2) Is the agency's estimate of the time spent completing the questionnaires for each program area (''burden of the proposed collection of information'') accurate, including the validity of the methodology and assumptions used?

(3) Can you suggest ways to enhance the quality, utility, and clarity of the information collected?

(4) Can you suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology?

D. Abstract

The U.S. Institute for Environmental Conflict Resolution plans to collect information from members and users of its National Roster of Environmental Dispute Resolution and Consensus Building Professionals, environmental dispute resolution professionals under contract with the Institute, users of its services, and participants in its programs. Responses to the collection of information (the questionnaires) will be voluntary and anonymous except for environmental dispute resolution professions under contract with the Institute, for whom responding will be a contractual obligation.

Background Information: U.S. Institute for Environmental Conflict Resolution

The U.S. Institute for Environmental Conflict Resolution was created in 1998 by the Environmental Policy and Conflict Resolution Act (Pub. L. 105–156). The Institute is located in Tucson, Arizona and is part of the Morris K. Udall Foundation, an independent agency of the executive branch of the federal government. The Institute's primary purpose is to provide impartial, non-partisan assistance to federal and non-federal parties. The Institute provides assistance in seeking agreement or resolving disputes through use of mediation and other collaborative, non-adversarial means regarding environmental, natural resources, and public lands issues involving a federal interest. The Institute accomplishes most of its work by partnering or contracting with, or referral to, experienced practitioners.

The Need for and Proposed Use of the Information Collected as Part of the Institute's Program Evaluation System

To comply with the Government Performance and Results Act (Pub. L. 103–62), the U.S. Institute for Environmental Conflict Resolution, as part of the Morris K. Udall Foundation, is required to produce an *Annual Performance Plan,* linked directly to the goals and objectives outlined in the Institute's five-year Strategic Plan. The Institute is also required to produce an *Annual Performance Report,* evaluating progress toward achieving its performance commitments. The Institute is currently developing a program evaluation system to gather and analyze information needed to assist in producing its Annual Performance Report.

The Institute is committed to establishing, achieving, and maintaining a national standard of excellence in all its programs, products, and services. To do so, the Institute requires high quality information concerning effectiveness of its various initiatives. Systematic and ongoing monitoring of program outcomes will allow the Institute to perform a variety of tasks, including giving individual project and program managers, as well as the Institute's management, the ability to accurately assess and report on program and project achievements. The new evaluation system has been carefully designed to support efficient and economical generation, analysis and use of this much-needed information, with an emphasis on program feedback, learning and improvement.

Primary audiences for results from the Institute's program evaluation system include members of its program staff and management, who will use the information in decision-making regarding program operation and directions, and oversight bodies such as the Udall Foundation Board of Trustees and OMB. Secondary audiences will likely include other federal agencies, practitioners in the field, researchers, and members of the public. The Institute will use the information and analysis generated by its program evaluation system for a variety of purposes. In addition to aiding improvements to the design and operation of Institute projects and programs, periodic performance reporting, and annual evaluations of personnel performance; the evaluation results will be used to illuminate what factors most influence successful outcomes from environmental conflict resolution (ECR) efforts in specific situations. Ultimately, this information should aid further development of best practices for the field of .ECR.

The Institute is exploring with several other federal agencies how its program evaluation system can be of use to these agencies' program evaluation needs. The broader use of similar data collection instruments and consistent data collection and analysis techniques may provide cost savings to other agencies and accelerate the rate at which each agency reviews and improves effective performance of conflict resolution processes.

E. Burden Statement

Each of the five ICRs covered by this **Federal Register** notice contains estimates of the time and financial burden imposed on respondents to the requests for information. 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 purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information and transmitting information. With respect to the information requests included in the five ICRs (a total of 20 questionnaires), burden includes time spent to: (1) Read letters of introduction and follow-up letters (either in hard copy or on the Institute's Web site) requesting that the questionnaires be completed and submitted, (2) reading instructions, answering questions, and submitting the

questionnaires; and (3) for a few questionnaires, accessing notes or other information to answer questions. Burden estimates are presented in terms of hours and imputed costs based on the estimated value of respondents' time. No start-up or capital costs for respondents are anticipated, even for questionnaires available electronically (these respondents will be members of the Institute's National Roster of Environmental Dispute Resolution and Consensus Building Professionals and will use the same computer equipment to access the questionnaires as was used to apply for Roster membership, or can request hard copies of the questionnaires and submit them via the US Postal Service).

Following is a summary of the burden estimates:

ECR Services Program Area

Type of Respondents: facilitators/mediators and participants in the Institute's ECR cases.

Estimated Number of Potential Respondents (annual average for three years): 1,170.

Proposed Frequency of Response: once per case for facilitators/mediators, once per case for attorneys, twice per case for parties.

Estimated Average Time per Respondent: 21 minutes.

Estimated Total Cost per Respondent: $10.39.

Conflict Assessment Services

Type of Respondents: facilitators/mediators and members of initiating organizations in the Institute's conflict assessments.

Estimated Number of Potential Respondents (annual average for three years): 220.

Proposed Frequency of Response: once per assessment.

Estimated Average Time per Respondent: 11 minutes.

Estimated Total Cost per Respondent: $7.36.

National Roster of Dispute Resolution and Consensus Building Professionals

Type of Respondents: members and users of the National Roster.

Estimated Number of Potential Respondents (annual average for three years): 385.

Proposed Frequency of Response: once per year for members, once per use event for users.

Estimated Average Time per Respondent: 18 minutes.

Estimated Total Cost per Respondent: $10.09.

ECR Training

Type of Respondents: instructors and participants in the Institute's training courses.

Estimated Number of Potential Respondents (annual average for three years): 415.

Proposed Frequency of Response: twice per course for instructors, three times per course for participants.

Estimated Average Time per Respondent: 39 minutes.

Estimated Total Cost per Respondent: $17.79.

Meeting Facilitation

Type of Respondents: attendees at the Institute's facilitated meetings.

Estimated Number of Potential Respondents (annual average for three years): 500.

Proposed Frequency of Response: once per meeting.

Estimated Average Time per Respondent: 5 minutes.

Estimated Total Cost per Respondent: $2.25.

F. Other Information

Each ICR also contains information on the following topics: development of the Institute's program evaluation system, confidentiality of information, estimates of costs to the Federal Government for collecting, processing, storing and using the requested information, and issues related to analysis of the information.

(Authority: 20 U.S.C. Sec. 5601–5609)

Dated: March 25, 2002.

Christopher L. Helms,

Executive Director, Morris K. Udall Foundation.

[FR Doc. 02–7577 Filed 3–28–02; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Music Section (American Jazz Masters Fellowships category) to the National Council on the Arts will be held on April 18, 2002 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, (Room 527) Washington, DC, 20506. A portion of this meeting, from 11:15 a.m. to 12:00 p.m., will be open to the public for policy discussion. The remaining portion of this meeting, from 10:00 a.m. to 11:15 a.m., will be closed.

The closed portion of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: March 25, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–7586 Filed 3–28–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #52

Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on April 23, 2002 from 10:45 a.m. to approximately 1:00 p.m. The meeting will be held in the Hubbard Hall Board Room of the National Geographic Society, 16th and M Streets, NW., Washington, DC 20036–4688.

The Committee meeting will begin at 10:45 a.m. with a welcome and introductions by Adair Margo, Committee Chairman. Agency heads Robert Martin (Director, Institute of Museum and Library Services), Bruce

Cole (Chairman, National Endowment for the Humanities), and Eileen Mason (Acting Chairman, National Endowment for the Arts) will present reports, and Henry Moran, Executive Director of the President's Committee on the Arts and the Humanities will then present an Executive Director's update. This will be followed by general discussion and closing remarks from the Committee Chairman.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c) (4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Georgianna Paul of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Paul.

If you need special accommodations due to a disability, please contact Ms. Paul through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: March 25, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–7587 Filed 3–28–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–390–CivP; 50–327 CivP; 50–328–CivP; 50–259–CivP; 50–260–CivP; 50–296–CivP; ASLBP No. 01–791–01–CivP; EA 99–234]

Atomic Safety and Licensing Board; Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 & 2; Browns Ferry Nuclear Plant, Units 1, 2 & 3); Evidentiary Hearing

March 25, 2002.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Richard F. Cole and Ann Marshall Young.

This proceeding involves a proposed civil penalty of $110,000, sought to be imposed by the NRC Staff on the Tennessee Valley Authority (TVA) for an alleged violation of NRC's employee-protection requirements set forth in 10 CFR 50.7, based upon the asserted discrimination against a former employee for engaging in protected activities. In response to an Order Imposing Civil Monetary Penalty, published at 66 FR 27,166 (May 16, 2001), TVA on June 1, 2001, filed a timely request for a hearing. On June 26, 2001, an Atomic Safety and Licensing Board, consisting of Dr. Richard F. Cole, Ann Marshall Young, and Charles Bechhoefer, who serves as Chairman, was established to preside over this proceeding. 66 FR 34,961 (July 2, 2001).

By Memorandum and Order dated June 28, 2001, the Licensing Board granted TVA's request for a hearing and, on the same date, issued a Notice of Hearing. 66 FR 35,467–35,468 (July 5, 2001). Parties to this proceeding are TVA and the NRC Staff. As set forth in the Order Imposing Civil Monetary Penalty, 66 FR at 27,167, issues to be considered are (a) whether the Licensee violated the Commission's requirements, as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, dated February 7, 2000 (NOV); and, if so, (b) whether, on the basis of such violation, the Order Imposing Civil Monetary Penalty should be sustained.

Notice is hereby given that the evidentiary hearing in this proceeding will commence on Tuesday, April 23, 2002, at 9:30 a.m. EDT, at the United States Bankruptcy Court, Courtroom A, Historic U.S. Courthouse, 31 E. 11th St., Chattanooga, Tennessee 37402. The hearing will continue on April 24–26, 2002, beginning at 9 a.m., and, to the extent necessary, on April 30–May 9, 2002, also commencing at 9 a.m., at the same location unless otherwise announced. Members of the public are invited to attend any of these sessions. Hearings will extend until approximately 5 p.m. each day. On Friday, April 26, 2002, however, the hearing will adjourn no later than 12 noon; no hearing is scheduled for Monday, April 29, 2002 and, as the hearing proceeds, the Board may make changes in the foregoing schedule, modifying the times for each day's session or canceling a session, as deemed appropriate to allow for witnesses' availability and other matters arising during the course of the proceeding.

Documents related to this proceeding issued prior to December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the Commission's Public Document Room (PDR), Room 0–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. Documents issued subsequent to November 1, 1999 are available electronically through the Agency wide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <*http://www.nrc.gov/NRC/ADAMS/index.html*>). The PDR and many public libraries have terminals for public access to the Internet.

It is so Ordered.

For the Atomic Safety and Licensing Board.

Dated in Rockville, Maryland, on March 25, 2002.

Charles Bechhoefer,

Administrative Judge.

[FR Doc. 02–7603 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–0299]

UMETCO Minerals Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact. Notice of opportunity for Hearing.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–648 to authorize the licensee, Umetco Minerals Corporation (Umetco) to apply Alternate Concentration Limits (ACL) to licensed constituents of ground water according to the submitted plan. An Environmental Assessment (EA) was performed by the NRC staff in support

of its review of Umetco's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U. S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, D.C. 20555–0001. Telephone 301/415–6606.

SUPPLEMENTARY INFORMATION:

Background

The Umetco former uranium mill site is licensed by the U. S. Nuclear Regulatory Commission (NRC) under Source Materials License SUA–648 to possess byproduct material in the form of uranium waste, such as mill tailings, generated by past uranium processing operations. The Umetco site is located in the East Gas Hills region of western Natrona and eastern Freemont Counties, Wyoming, approximately 80 kilometers (50 miles) southeast of the town of Riverton, Wyoming. The mill operated from 1960 to 1979 and was dismantled in 1992. The Umetco site contains two reclaimed disposal areas; the Above Ground Tailings Impoundment (Impoundment) (including the heap leach area) and the A–9 Repository. The license establishes a separate ground water protection standard for each area. The ground water protection standard is established at two Point of Compliance (POC) wells near each disposal area. These four wells are used to monitor water quality because hazardous constituents have leached from the milling waste into the upper aquifer.

The ACL application requests that site-specific concentration limits for hazardous constituents in ground water be granted for the Umetco site in place of the current concentration values in the license. The concentration limits required to be met under the licensed corrective action program are not attainable due to the high cost and the influence of mining-impacted water. The ground water at the Umetco site and surrounding areas is impacted by open-pit uranium mines with the same constituents resulting from the tailings and this was not considered when the corrective action began in 1991.

Umetco is also proposing that the Point of Exposure (POE) be established for the site at the long-term care boundary. This boundary encompasses all the land that will be transferred to the U.S. Department of Energy (DOE) for perpetual care of the disposal sites. The western side of the boundary would be located about 1.4 km (0.8 miles) west of the Impoundment and the southern side of the boundary would be located about 0.8 km (0.5 miles) south of the A–9 Repository. The POE is the location nearest the site where the public or environment might be exposed to milling impacted ground water, even though such exposure is highly unlikely.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the application of ACL, in accordance with 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. The license amendment would authorize Umetco to apply ACL to the license constituents measured at the POC. The technical aspects of the ACL application are discussed separately in a Technical Evaluation Report (TER) that will accompany the agency's final licensing action.

The results of the staff's appraisal of potential environmental impacts are documented in an EA placed in the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined actual and potential impacts associated with implementation of the proposed ACL, and has determined that the requested amendment of Source Material License SUA–648, authorizing the ACL, will: (1) Be consistent with requirements of 10 CFR Part 40, Appendix A; (2) not be inimical to the public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. An acceptable long-term ground water monitoring program will monitor contaminants to detect if applicable regulatory limits are exceeded. Each of the licensed constituents should remain within the range of background values, for 1000 years at the POE.

2. Present and potential health risks to the public and risks of environmental damage from the proposed application of ACL were assessed. Given the remote location, the expected future land use, the perpetual control by the Federal government of land within the long-term boundary, and the high value of some of the constituents in background due to past surface mining in the area, the staff determined that the risk factors for health and environmental hazards are insignificant.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA–648, to allow application of ACL to licensed constituents in ground water at the Umetco site. The principal alternatives available to the NRC are to:

1. Approve the license amendment request as submitted; or
2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or
3. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of Umetco's plans necessary for license termination (site is in final stages of decommissioning) or the denial of the license amendment. Additionally, in the TER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the ground water criteria specified in 10 CFR 40, Appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed amendment of NRC Source Material License SUA–648. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operators Licensing

Proceedings,'' of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Umetco Minerals Corporation, P.O. Box 1029, Grand Junction, CO 81502;

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(3) By mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

Any hearing that is requested and granted will be held in accordance with the Commission's ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 24th day of March, 2002.

For the Nuclear Regulatory Commission.

Melvyn Leach,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–7605 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company, North Anna Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia. Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Sections 51.21 and 51.32, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would be a full conversion from the current technical specifications (CTS) to a set of improved technical specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. The proposed action is in accordance with the licensee's application dated December 11, 2000, as supplemented by letters dated May 30, June 18, July 16, July 20, August 13, August 27, September 27, October 10, October 17, November 8, November 19, November 29, December 3, December 7, December 12, and December 13, 2001, and January 2, January 25, January 31, February 11, February 18, February 22, February 27, and March 7, 2002.

The Need for the Proposed Action

The Commission's ''Proposed Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (52 FR 3788), dated February 6, 1987, contained an Interim Policy Statement that set forth objective criteria for determining which regulatory requirements and operating restrictions should be included in the TS. When it issued the Interim Policy Statement, the Commission also requested comments on it. Subsequently, to implement the Interim Policy Statement, each reactor vendor owners group and the NRC staff began developing standard TS (STS) for reactors supplied by each vendor. The Commission then published its ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (58 FR 39132), dated July 22, 1993, in which it addressed comments received on the Interim Policy Statement, and incorporated experience in developing the STS. The Final Policy Statement formed the basis for a revision to 10 CFR 50.36 (60 FR 36953), dated July 19, 1995, that codified the criteria for determining the content of TS. The NRC Committee to Review Generic Requirements reviewed the STS, made note of their safety merits, and indicated its support of conversion by operating plants to the STS. For the North Anna Power Station, Units 1 and 2, the STS are NUREG–1431, Revision 1, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. This document formed the basis for the North Anna Power Station, Units 1 and 2, conversion.

The proposed changes to the CTS are based on NUREG–1431 and guidance provided in the Final Policy Statement. The objective of this action is to completely rewrite, reformat, and streamline the CTS (*i.e.,* to convert the CTS to ITS). Emphasis was placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the CTS were also used as the basis for the development of the North Anna Power Station, Units 1 and 2 ITS. Plant-specific issues (i.e., unique design features, requirements, and operating practices) were discussed at length with the licensee.

The proposed changes from the CTS can be grouped into four general categories. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, and less restrictive changes. They are described as follows:

Administrative changes are those that involve restructuring, renumbering, rewording, complex rearranging of requirements, and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1431 and do not involve technical changes to the existing TS. The proposed changes include: (a) Identifying plant-specific wording for system names, etc.; (b)

changing the wording of specification titles in the CTS to conform to the STS; (c) splitting up requirements that are currently grouped, or combining requirements that are currently in separate specifications; (d) deleting specifications whose applicability has expired; and (e) changing to wording that is consistent with the CTS but that more clearly or explicitly states existing requirements. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in the TS. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in 10 CFR 50.36(c)(2)(ii) and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria to North Anna Power Station, Units 1 and 2, is described in the December 11, 2000, application. The affected structures, systems, components, or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the ITS Bases, the Technical Requirements Manual, the Core Operating Limits Report, the Offsite Dose Calculation Manual, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other NRC-approved control mechanisms which provide appropriate procedural means to control changes by the licensee.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the plant. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses.

Less restrictive changes are those where CTS requirements are relaxed, relocated, eliminated, or where new plant operational flexibility has been provided. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the owners groups' comments on the ITS. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they were consistent with current licensing practices and NRC regulations. The licensee's design was reviewed to determine if the specific design basis and licensing basis were consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition, there are 18 changes that are different from the requirements in both the CTS and NUREG–1431 or that are beyond the scope of the changes that are needed to meet the overall purpose of the conversion. These changes are as follows:

1. Change the Allowable Value for engineered safety feature actuation system (ESFAS) interlock P–12 from < 545 degrees F and ≥ 541 degrees F to ≤ 545 degrees F and ≥ 542 degrees F. (ITS 3.3.2)

2. Remove the trip setpoints and change the Allowable Values for the ESFAS Instrumentation. (ITS 3.3.2)

3. Add a note to Action C to indicate that the accumulator isolation is only applicable when accumulator pressure is greater than the power-operated relief valve (PORV) setting, add REQUIRED ACTION C.2 to state ''Remove power from affected accumulator isolation valve operators,'' and add a note in the Limiting Condition for Operation (LCO) section that states ''Accumulator isolation with power removed from the isolation valve operators is only required when accumulator pressure is greater than the PORV lift setting.'' (ITS 3.4.12)

4. Revise required Actions A.2, B.2, C.2, and D.2 to allow verification by administrative controls to ensure the Main Feedwater Isolation Valves, Main Feedwater Regulating Valves, Main Feedwater Pump Discharge Valves, and Main Feedwater Regulating Bypass Valves are closed. (ITS 3.7.3)

5. Remove Component Cooling Water System from ITS LCO 3.7.7. (ITS 3.7.7)

6. Revise the definition of the Ultimate Heat Sink (UHS), which includes the North Anna and Service Water Reservoirs, to only include the Service Water Reservoir. Delete surveillance requirements (SRs) on the North Anna Reservoir. (ITS 3.7.9)

7. Revise the SR frequency from ''18 months'' to ''18 months on a staggered test basis'' for the Main Control Room (MCR)/Emergency Switchgear Room (ESGR) Air Conditioning System. (ITS 3.7.11.1)

8. Add a note to allow the emergency core cooling system (ECCS) pump room boundary openings, which were not open by design, to be opened intermittently under administrative control. (ITS 3.7.12)

9. Add an SR to actuate each ECCS pump room exhaust air cleanup system train by aligning the safeguards area exhaust flow and auxiliary building central exhaust flow through the auxiliary building high-efficiency particulate air filter and charcoal adsorber assembly. Change current SRs to verify each safeguards area exhaust flow is diverted and each auxiliary building filter bank is actuated on an actual or simulated actuation signal. (ITS 3.7.12.2 and 3.7.12.4)

10. Delete testing requirements for the fuel building filtration system. (ITS 3.7.15)

11. Delete the requirements to obtain NRC approval prior to plant operations whenever a steam generator is found to be in Category C–3. (ITS Table 5.5.8–2)

12. Implement plant-specific equations for the overtemperature and overpower delta T equations. (ITS 3.3.1)

13. Change SR 3.3.1.2 and the CTS by only requiring an adjustment of the power range channel if the indicated power of the nuclear instrumentation channel is more than 2% lower than the calculated power of the calorimetric. (ITS 3.3.1)

14. Revise the allowable values of the setpoint for the P–7 low power reactor trips block interlock to a value that differs from the CTS. (ITS 3.3.1, Table 3.3.1–1)

15. Revise the ITS to require entry into ACTION if less than 100% of MCR/ESGR air conditioning system is available. (ITS 3.7.11)

16. Add a function to Table 3.3.2–1 for automatic switchover to containment sump to occur when the refueling water storage tank level is at low—low level. (ITS 3.3.2)

17. Revise the CTS values for reactor trip system instrumentation interlocks by not requiring these specific

interlocks to state the reset values for the allowable values. (ITS 3.3.1)

18. Implement Technical Report EE–0116, Revision 1, ''Allowable Values for Surry and North Anna Improved Technical Specifications (ITS) Tables 3.3.1–1 and 3.3.2–1.''

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. Specifically, the proposed TS changes will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites because no previously undisturbed area will be affected by the proposed TS changes. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the North Anna Power Station, Units 1 and 2, dated April 1973.

Agencies and Persons Consulted

On February 27, 2002, the staff consulted with the Virginia State Official, Mr. Les Foldesi of the Virginia Department of Health, Bureau of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 11, 2000, as supplemented by letters dated May 30, June 18, July 16, July 20, August 13, August 27, September 27, October 10, October 17, November 8, November 19, November 29, December 3, December 7, December 12, and December 13, 2001, and January 2, January 25, January 31, February 11, February 18, February 22, February 27, and March 7, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of March 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–7607 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 11–13, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, April 11, 2002

8:30 A.M.—8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.—10:30 A.M.: Final Review of the Turkey Point License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Florida Power and Light Company regarding the license renewal application for Turkey Point Units 3 and 4, and the associated staff's Safety Evaluation Report (SER).

10:45 A.M.—12:30 P.M.: Advanced Reactor Research Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the Office of Nuclear Regulatory Research (RES) regarding RES'' draft Advanced Reactor Research Plan.

1:30 P.M.—3:30 P.M.: CRDM Penetration Cracking and Reactor Pressure Vessel Head Degradation (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and industry, including Davis-Besse regarding issues related to the investigation of circumferential cracks in PWR control rod drive mechanism (CRDM) penetration nozzles and weldments, and reactor pressure vessel head degradation at the Davis-Besse Nuclear Power Plant.

3:50 P.M.—5:15 P.M.: Westinghouse Owners Group (WOG) and Electric Power Research Institute (EPRI) Initiatives Related to Risk-Informed Inservice Inspection of Piping (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's draft safety evaluation reports on WOG and EPRI addendums to their topical reports (WCAP–14572 and EPRI TR–112657) for risk-informed inservice inspection of piping, including extension of risk-informed methods to the break exclusion region piping.

5:30 P.M.—7 P.M.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. Also, it may discuss a response prepared by the Advisory Committee on Nuclear Waste (ACNW) to the Executive Director for Operation's letter dated

March 6, 2002 to the ACNW report dated January 14, 2002 regarding risk-informing NMSS activities.

Friday, April 12, 2002

8:30 A.M.—8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.—10:30 A.M.: General Electric (GE) Nuclear Energy Topical Report: ''Constant Pressure Power Uprate'' (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and General Electric Nuclear Energy regarding GE Topical Report, ''Constant Pressure Power Uprate,'' and the associated NRC staff's safety evaluation.

Note: A portion of this session may be closed to discuss General Electric proprietary information.

10:50 A.M.—11:45 A.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

11:45—12 Noon.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

1 P.M.—7 P.M.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, April 13, 2002

8:30 A.M.—12:30 P.M.: Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 P.M.—1:00 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Sher Bahadur, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Dr. Sher Bahadur prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Dr. Sher Bahadur if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur (telephone 301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html*.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 25, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–7604 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Yucca Mountain Review Plan, NUREG–1804, Revision 2,; Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of, and requesting comments on, ''Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment.'' The ''Yucca Mountain Review Plan'' provides guidance to the NRC staff for evaluating a potential license application for a geologic repository.

DATES: Comments should be submitted at the public meetings, or in writing by March 29, 2002. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

In addition to providing opportunity for written (and electronic) comments, public meetings on the ''Yucca Mountain Review Plan'' will be held during the public comment period. A notice announcing these meetings will be published in the **Federal Register**.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–0001. Deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

Copies of any comments received and documents related to this action may be examined at the NRC Public Document Room, One White Flint North, Public File Area O1–F21, 11545 Rockville Pike, Rockville, Maryland. Documents are also available electronically at NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/reading-

rm.html. From this site, the public can gain entry into NRC's Agency-wide Documents Access and Management System, which provides text and image files of NRC's public documents. For more information, contact the NRC's Public Document Room Reference staff by telephone at (800) 397–4209, (301) 415–4737, or e-mail: *pdr@nrc.gov*.

The document is also available at NRC's website at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1804/*. You may also send comments electronically from this website by clicking on *comment form*. If a hard copy is preferred, a free single copy of the ''Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment,'' may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Reproduction and Distribution Services Branch, Washington, DC 20555–0001; sending an e-mail to *Distribution@nrc.gov*; or by sending a fax to (301) 415–2289. A copy of the ''Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment,'' is also available for inspection, and copying for a fee, in the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION, CONTACT: Jeffrey A. Ciocco, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–7F3, Washington, DC 20555–0001, telephone (301) 415–6391, e-mail: *jac3@nrc.gov*.

SUPPLEMENTARY INFORMATION: The licensing criteria are contained in the Commission's regulations (part 63), ''Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, NV'' (November 2, 2001; 66 FR 55732). The Secretary of Energy has recommended to President Bush the Yucca Mountain site for the development of a nuclear waste repository. President Bush has notified Congress that Yucca Mountain is qualified for a construction permit application. The law now gives Nevada the opportunity to disapprove the President's recommendation, and, if they do, then Congress will have an opportunity to act. The Department of Energy (DOE) would submit any license application to the NRC. NRC then must review and either approve or disapprove the license application.

The principal purpose of the ''Yucca Mountain Review Plan'' is to ensure the quality and uniformity of NRC staff review of a potential license application. The ''Yucca Mountain Review Plan'' has separate sections for reviews of repository safety before permanent closure, repository safety after permanent closure, the research and development program to resolve safety questions, the performance confirmation program, and administrative and programmatic requirements. Each of these sections would support NRC's review of DOE's compliance determination with specific regulatory requirements from part 63. The regulations and the Yucca Mountain Review Plan'' are risk-informed and performance-based to the extent practical.

Dated at Rockville, Maryland, this 22nd day of March 2002.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–7606 Filed 3–28–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings; Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 1, 2002: closed meetings will be held on Tuesday, April 2, 2002 and Wednesday, April 3, 2002 at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, April 2, 2002, will be: opinions; formal order of private investigation; regulatory matter regarding financial institutions; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Wednesday, April 3, 2002, will be: formal orders of private investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: March 26, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7777 Filed 3–27–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45639; File No. SR–Amex–2002–18]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Oil and Natural Gas Notes

March 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b-4 thereunder, [2] notice is hereby given that on March 8, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II 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 and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade notes, the return on which is based upon the Oil and Natural Gas Index. The Oil and Natural Gas Index is based upon the blended performance of the Amex Oil Index (the ''Oil Index'') and the Amex Natural Gas Index (the ''Natural Gas Index'') (each, an ''Underlying Index'' and together, the ''Underlying Indices''), discussed more fully below. Initially, the Underlying Indices will each have a weighting of 50% of the Oil and Natural Gas Index,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

and the Oil and Natural Gas Index will be rebalanced annually to reset the weighting of the Underlying Indices to approximately 50% each.

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 Amex 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 III below. The Amex 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

Under Section 107A of the Amex Company Guide (''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants. [3] The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Oil and Natural Gas Index (the ''Notes''). The Oil and Natural Gas Index will be determined, calculated, and maintained solely by the Amex. [4]

The Notes will conform to the initial listing guidelines under Section 107 [5] and continued listing guidelines under Sections 1001–1003 [6] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. (''Merrill Lynch'') that provide for single payment at maturity. The Notes will have a term of not less than one nor more than ten years and will entitle the owner at maturity to receive an amount based upon the percentage change between the ''Starting Index Value'' and the ''Ending Index Value'' (the ''Redemption Amount''). The ''Starting Index Value'' is the value of the Oil and Natural Gas Index on the date on which the issuer prices the Notes issued for the initial offering of sale to the public. The ''Ending Index Value'' is the value of the Oil and Natural Gas Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount owners will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During a two-week period in the designated month each year, the investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Oil and Natural Gas Index at such repurchase date. The Notes are not callable by the issuer.

The Notes are cash-settled in U.S. dollars. The holder of a Note does not have any right to receive any of the securities comprising the Underlying Indices or any other ownership right or interest in the Underlying Securities. The Notes are designed for investors who want to participate or gain exposure to the U.S. oil and natural gas industries and who are willing to forgo market interest payments on the Notes during such term. [7]

The Oil and Natural Gas Index is based upon the combined performance of the Oil Index and the Natural Gas Index. The Oil Index is an index comprised of fourteen (14) stocks of large, widely-held oil companies. The Oil Index is a price-weighted index that measures the performance of the oil industry through changes in the sum of the prices of its component stocks. The Index was developed with a benchmark level of 125.00 on August 27, 1984. The current component securities in the Oil Index are listed on the New York Stock Exchange Inc. (the ''NYSE''). As of March 1, 2002, the market capitalization of the securities included in the Oil Index ranged from a high of $291.2 billion to a low of $3.1 billion. The average daily trading volume for these index securities over the last six (6) months ended March 1, 2002, ranged from a high of 10.01 million shares to a low of .41 million shares. The Commission has previously approved the listing and trading of options on the Oil and Gas Index, which was later modified and re-named the Oil Index. [8]

The Natural Gas Index is an index comprised of fifteen (15) securities of highly-capitalized companies in the natural gas industry. The Natural Gas Index is calculated using an equal dollar-weighting methodology designed to ensure that each of the component securities are represented in equal dollar amounts in the Index. A benchmark level of 300.00 for the Index was initially established at the close of trading on October 15, 1993. The index portfolio consists of fifteen (15) natural gas industry stocks or American Depositary Receipts (''ADRs'') which are listed on the Amex, the NYSE or traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation System (''NASDAQ'') and reported National Market System securities. As of March 1, 2002, the market capitalization of the securities included in the Natural Gas Index ranged from a high of $21.2 billion to a low of $1.5 billion. The average daily trading volume for these index securities over the last six (6) months ended March 1, 2002 ranged from a high of 5.85 million shares to a low of .151 million shares. The Exchange has previously listed options on the Natural Gas Index. [9]

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[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89–29).

[4] Subject to the criteria described in the prospectus supplement regarding the construction of the Oil and Natural Gas Index, the Exchange has sole discretion regarding changes to the Oil and Natural Gas Index.

[5] The initial listing standards for will require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[6] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[7] Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Steven G. Johnston, Attorney, Division of Market Regulation, Commission, on March 3, 2002. (''March 3, 2002 Telephone Conversation'').

[8] *See* Securities Exchange Act Release No. 20075 (August 12, 1983), 48 FR 37556 (August 18, 1983) (approving the listing and trading of options on the Oil and Gas Index)(''Oil and Gas Index Approval Order''); Securities Exchange Act Release No. 21409 (October 19, 1984), 49 FR 43011 (October 25, 1984) (approving change of index from market-weighted to price-weighted index; reduction in number of component stocks by eliminating companies engaged in substantial gas exploration, drilling, and production activities; and changing name to the Oil Index).

[9] *See* Securities Exchange Act Release No. 33720 (March 7, 1994), 59 FR 11630 (March 11, 1994) (approving listing and trading of options based on the Natural Gas Index)(''Natural Gas Index Approval Order'').

At the outset, the Underlying Indices will each represent 50% of the Starting Index Value. Specifically, both the Oil Index and Natural Gas Index will be assigned a multiplier on the date of issuance so that each Underlying Index represents an equal percentage of the value of the Oil and Natural Gas Index on the date the Notes are priced for initial sale to the public. The multiplier indicates the percentage of the Underlying Index, given its current value, to be included in the calculation of the Oil and Natural Gas Index. The Oil and Natural Gas Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day the Notes are priced for initial sale to the public.

The value of the Oil and Natural Gas Index at any time will equal: (1) the sum of the values of each Underlying Index multiplied by their respective multiplier, plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.[10] Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by an issuer represented in the Underlying Indices, multiplied by the number of shares of stock in the respective Underlying Index on the ex-dividend date, divided by the index divisor applicable to such Underlying Index, multiplied by the multiplier applicable to such Underlying Index on the ex-dividend date.[11]

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each respective Underlying Index in the Oil and Natural Gas Index. Thus, the value of the dividends is allocated to each respective Underlying Index. The share multiplier of each Underlying Index will be adjusted to reflect a reinvestment of such current quarter dividends into each Underlying Index based on the closing market price of the Underlying Index on the last day in the immediate preceding calendar quarter.[12]

As of the close of business each anniversary date (anniversary of the day the Index was initially calculated and set to 100), the Index will be rebalanced by the Amex so that each Underlying Index will represent approximately 50% of the value of the Index. To effectuate this result, the multiplier for each Underlying Index will be determined by the Amex and will indicate the percentage allocated to each Underlying Index, given their respective closing values on the anniversary date, so that each Underlying Index represents an equal percentage of the Oil and Natural Gas Index value at the close of business on an anniversary date. For example, if the Oil and Natural Gas Index value at the close of business on an anniversary date was 200, then each of the Underlying Indices would be allocated a portion of the value of the Oil and Natural Gas Index equal to 100, and if the closing market price of one Underlying Index on the anniversary date was 160, the applicable share multiplier would be reset to 0.625. Conversely, if the Oil and Natural Gas Index value was 80, then each of the Underlying Indices would be allocated the value of the Index equal to 40 and if the closing market price of one Underlying Index on the anniversary date was 20, the applicable share multiplier would be reset to 2.

The Exchange will calculate the Oil and Natural Gas Index and, similar to other stock index values published by the Exchange, the value of the Oil and Natural Gas Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

Because the Notes are linked to a portfolio of equity indices, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[13] Second, the Notes will be subject to the equity margin rules of the Exchange.[14] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) to determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. Furthermore, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.[15]

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[16] in general and furthers the objectives of Section 6(b)(5)[17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[10] March 3, 2002 Telephone Conversation. At the end of each day, the Oil and Natural Gas Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (*i.e.*, 1.5% / 365 days = 0.0041% daily). This reduction to the value of the Oil and Natural Gas Index will reduce the total return to investors upon the exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

[11] March 3, 2002 Telephone Conversation.

[12] March 3, 2002 Telephone Conversation.

[13] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[14] *See* Amex Rule 462 and Section 107B of the Company Guide.

[15] March 3, 2002 Telephone Conversation.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

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 Exchange. All submissions should refer to File No. SR–Amex–2002–18 and should be submitted by April 19, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[18] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[19] Accordingly, the Commission finds that the listing and trading of the Notes based on the Oil and Natural Gas Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[20]

As described more fully above, at maturity, or upon exchange, the holder of a Note will receive an amount based upon the percentage change in the value of the Oil and Natural Gas Index, less the index adjustment factor. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate in the U.S. oil and natural gas industries. As described by the Amex, the value of the dividends is allocated to each respective Underlying Index.

The Notes are not-leveraged, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Oil and Natural Gas Index. The Notes do not have a minimum principal amount that will be repaid at maturity and the payments on the Notes prior to or at maturity may be less than the original issue price of the Notes.[21] Thus, if the Oil and Natural Gas Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced, based on the performance of the Underlying Indices, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Commission notes that the Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have at least $4 million in market value.[22] In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Indices comprising the Oil and Natural Gas Index, will be publicly available.[23]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[24] the Commission believes that

[18] *Id.*

[19] *See* Securities Exchange Act Release Nos. 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected notes linked to the Bio-Tech Pharmaceutical Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non–principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than twenty equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities (''MITTS'')) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[20] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] The Commission recognizes that during a two-week period in the designated month investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Oil and Natural Gas Index at such repurchase date.

[22] *See* Company Guide Section 107A.

[23] The companies that comprise the Oil and Natural Gas Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[24] *See, e.g.,* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7,

Continued

this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Indices of the Oil and Natural Gas Index or raise manipulative concerns. As discussed more fully above, the Oil and Natural Gas Index is based upon the return of the Underlying Indices. Each of the Underlying Indices will have a weighting of 50% of the weight of the Oil and Natural Gas Index, initially, and immediately following each annual rebalancing of the Oil and Natural Gas Index. In addition, the Oil Index's price-weighting and the Natural Gas Index's equal dollar-weighting methodologies are commonly applied index calculation methods. Moreover, Amex's listing and trading of other products on both of the Underlying Indices have been previously approved by the Commission.[25] In approving the listing and trading of these other products on the Underlying Indices, the Commission noted in its approval orders that the Amex has developed several composition and maintenance criteria for the Underlying Indices that the Commission believes will minimize the potential for manipulation of the Underlying Indices.[26] In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Oil and Natural Gas Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Oil and Natural Gas Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[27] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[28] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Amex–2002–18), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

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1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[25] *See* Oil and Gas Index Approval Order, *supra* note 9; and Natural Gas Approval Order, *supra* note 10.

[26] Among other things, the Amex would be required to submit a rule filing with the Commission pursuant to Section 19(b) of the Act prior to expanding either of the Underlying Indices to greater than twenty stocks or reducing either of the Underlying Indices to less than ten stock. The Commission finds that this requirement will protect against the design of the Underlying Indices from being materially changed without Commission review and approval, and that it is unlikely that attempted manipulations of prices of the issues in the Underlying Indices would affect significantly the Underlying Indices' value. *See* Securities Exchange Act Release No. 31245 (September 28, 1992, 57 FR 45844 (October 5, 1992) (approving the listing and trading of long-term options (''LEAPS'') based on the Biotech Index and a reduced value Biotech Index).

[27] *See supra* note 20.

[28] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45628; File No. SR–Amex–2001–94]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the American Stock Exchange LLC To Increase to Two Hundred and Fifty the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO–EX

March 22, 2002.

I. Introduction

On October 29, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO–EX. On November 15, 2001, the proposed rule change was published for public comment in the **Federal Register**.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

In 1985, the Exchange implemented its AUTO–EX system for options, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File (''AOF''). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO–EX, was recently increased to allow for the entry of orders of up to 2,500 option contracts.[4] AUTO–EX, however, is only permitted to execute equity option orders and index option orders of up to 100 contracts.[5] Thus, market and marketable limit orders of more than 100 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through the AUTO–EX system. It is proposed that this increase to 250 contracts as the permissible order size for AUTO–EX be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size and AUTO–EX parameters on its web page. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

The Exchange represents that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45045 (November 7, 2001), 66 FR 57495.

[4] *See* Securities Exchange Act Release No. 44065 (March 12, 2001), 66 FR 15513 (March 19, 2001).

[5] *See* Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001) (approving amendment to Amex Rule 933).

and during other, non-emergency situations for certain option classes. The Exchange believes that automatic executions of orders for up to 250 contracts will allow for the quick, efficient execution of public customer orders.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[6] Among other provisions, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.[7]

While increasing the maximum order size limit from 100 contracts to 250 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for AUTO–EX. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to the Amex's AUTO–EX system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO–EX, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex floor governors or senior floor officials determine to approve orders as large as 250 contracts as eligible for AUTO–EX, Amex floor governors or senior floor officials or Amex staff should disengage AUTO–EX more frequently by, for example, declaring an ''unusual market condition.''[8] Disengaging AUTO–EX can negatively affect investors by making it slower and less efficient to execute their orders. It is the Commission's view that the Amex, when increasing the maximum size of orders that can be sent through AUTO–EX, should not disadvantage all customers—the vast majority of whom enter orders for less than 250 contracts—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2001–94) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[6] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] The Amex has filed a proposed rule change (File No. SR–Amex–2001–74) with the Commission that would codify the Exchange's current practices and policies by specifying (i) the circumstances under which AUTO–EX can be disengaged or operated in a manner other than the normal manner set forth in Exchange rules and policies and (ii) the required documentation of the reasons for any action to disengage AUTO–EX to operate in a manner other than normal. The proposed rule change was filed pursuant to the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282) and is pending with the Commission.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45630; File No. SR–CBOE–2002–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Customer Portfolio and Cross-Margining Requirements

March 22, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules, for certain customer accounts, to allow member organizations to margin listed, broad-based, market index options, index warrants and related exchange-traded funds according to a portfolio margin methodology as an alternative to the current strategy-based margin methodology. The proposed rule change will also provide for cross-margining by allowing broad-based index futures and options on such futures to be included with listed, broad-based index options, index warrants and related exchange-traded funds for portfolio margin treatment.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, at the Commission, and on the Commission's website.

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 CBOE proposes to expand its margin rules by providing a portfolio margin methodology for listed, broad-based market index options, index warrants and related exchange-traded funds that clearing member organizations may extend to eligible customers as an alternative to the current strategy-based option margin requirements. The proposed rule change would also allow broad-based index futures and options on such futures to be included in a portfolio margin account, thus providing a cross-margin capability. The CBOE seeks to introduce the proposed new rule as a two-year pilot program that would be made available to member organizations on a voluntary basis.

The proposed rule change would permit self-clearing member organizations to apply a prescribed portfolio margin methodology to an account[3] of an affiliate, another broker-dealer, and an account of a member of a national futures exchange who is a futures floor trader. Any other customers of the clearing member would be required to have account equity of at least $5 million to be eligible for portfolio margin treatment. This circumscribes the number of accounts able to participate and adds safety in that such accounts are more likely to be of significant financial means and investment sophistication. Further, portfolio margining is most effective when applied to larger accounts with diverse option positions and related securities, and any related futures contracts. It is expected that institutional customers will be the primary participants. Whether the account equity requirement should be lowered to allow participation of more customers will be assessed at the end of the pilot program period. Application of portfolio margin, including cross-margin, to an IRA account would be prohibited under the proposed rule change.

The proposed portfolio margin and cross-margin rules have been developed by the CBOE in cooperation with The Options Clearing Corporation (''The OCC''), the New York Stock Exchange, Inc. (''NYSE''), the American Stock Exchange, LLC (''AMEX''), the Board of Trade of the City of Chicago, Inc. (''CBOT''), and the Chicago Mercantile Exchange, Inc. (''CME''). The CBOE intends to provide a written overview describing the operational details of the portfolio margin and cross-margin pilot program to potential member organization participants to introduce and explain the pilot program.

A committee of representatives from the member organizations identified as potential participants, and staff of the sponsoring exchanges and The OCC (the ''Portfolio Margin Committee'') was formed and met several times in 1999 and 2000 to refine the portfolio margin and cross-margin pilot program. This group has recommended adoption of the portfolio margin and cross-margin pilot program, as finalized by the group, and the related rule proposals. In addition, the portfolio margin and cross-margin pilot program has been presented to the NYSE's Rule 431 Committee[4] on two occasions, with draft rules included on the second occasion, and has received the NYSE's Rule 431 Committee's support.

b. Overview—Portfolio Margin Computation

(1) Portfolio Margin

Under a portfolio margin system, margin is required based on the greatest loss that would be incurred in a portfolio if the value of components (underlying instruments in the case of options) move up or down by a predetermined amount (*e.g.,* +/−5%). Under the Exchange's proposed portfolio margin rule, listed index options and underlying instruments (also related instruments[5] in the case of a cross-margin account) would be grouped by class[6] (*e.g.,* S&P 500, S&P 100, etc), each class group being a portfolio.[7] The gain or loss on each position in a portfolio would be calculated at each of 10 equidistant points (''valuation points'') set at and between the upper and lower market range points. A theoretical options pricing model would be used to derive position values[8] at each valuation point for the purpose of determining the gain or loss. Gains and losses would then be netted for positions within the class or portfolio at each valuation point. The greatest net loss among the 10 valuation points would be the margin required on the portfolio or class. The margin for all other portfolios within an account would be calculated in a similar manner. Broad-based index classes (portfolios) that are highly correlated would be allowed offsets such that, at the same valuation point, for example, 90% of a gain in one class may reduce or offset a loss in another class. The amount of offset allowed between portfolios would be the same amount that is permitted under the risk-based haircut methodology set forth in Appendix A of the Commission's net capital rule.[9] A per contract minimum would be established and would override if a lesser requirement is rendered by the portfolio margin computation.[10]

Member organizations would not be permitted to use any theoretical pricing model to generate the prices used to calculate theoretical profits and losses. Under the proposed rule change, the theoretical prices used for computing profits and losses must come from a theoretical pricing model that, pursuant to the Commission's net capital rule,[11] qualifies for purposes of determining the amount to be deducted in computing net capital under a portfolio-based methodology. CBOE believes that delineating acceptable theoretical pricing models is best achieved by applying the Commission's net capital rule by reference. In this way, consistency with the Commission's net capital rule is maintained. In addition, since theoretical pricing models must be approved by a Designated Examining Authority (''DEA'') and reviewed by the Commission to qualify, uniformity across models can be assured. As a result, portfolio margin and cross-margin requirements will not vary materially from firm to firm. Currently, the theoretical model used by The OCC is the only model qualified pursuant to the Commission's net capital rule.

[3] An account dedicated to portfolio margining.

[4] The NYSE Rule 431 Committee is comprised of securities industry representatives, primarily representatives of NYSE member organizations. NYSE Rule 431 contains the NYSE's margin rules. The function of the NYSE Rule 431 Committee is to assess the adequacy of NYSE Rule 431 on an ongoing basis, review proposals for changes to NYSE Rule 431, and recommend changes that are deemed appropriate.

[5] Under the proposed rule change, the term ''related instrument'' would mean, with respect to an options class or product group, futures contracts and options on futures contracts covering the same underlying instrument.

[6] Under the proposed rule change, the term ''options class'' would refer to all options contracts covering the same underlying instrument.

[7] CBOE's pilot program would permit an exchange-traded fund structured to replicate the composition of the index to be included; however, stock baskets would not be permitted at this time.

[8] Position values would represent the difference between the position closing price and the theoretical value at each valuation point.

[9] Rule 15c3–1a under the Act, 17 CFR 240.15c3–1a.

[10] The proposed rules set a per contract minimum of $37.50.

[11] *See* Rule 15c3–1a(b)(1)(i)(B) under the Act, 17 CFR 240.15c3–1a(b)(1)(i)(B).

Consequently, all member organizations participating in the pilot program would, at least for the foreseeable future, obtain their theoretical values from The OCC.

The Exchange's proposed rule would propose a market range of +/−10% for computing theoretical gains and losses in broad-based, non-high capitalization index portfolios. A market range of +6%/−8% is proposed for broad-based, high capitalization index portfolios.[12] These are the same ranges currently applied to options market makers for the purpose of computing portfolio or risk-based haircuts. On a historical basis, these ranges cover one day moves at a very high level of confidence, and would be competitive with the market range coverage applied for performance bond (margin) purposes in the futures industry on comparable index futures. The proposed rule change requires that a separate securities margin account (or subaccount of a securities margin account) be used for portfolio margining.

(2) Cross-Margining

Related index futures and options on such futures would be allowed to be carried in the portfolio margin account, thus affording a cross-margin capability. Alternatively, the proposed rule change permits a clearing member to establish a separate portfolio margin account (securities margin account) exclusively for cross-margining. In a portfolio margin account, including one that is used exclusively for cross-margining, constituent portfolios may be formed containing index options, index warrants and exchange-traded funds structured to replicate the composition of the index underlying a particular portfolio, as well as related index futures and options on such futures. Cross-margining would operate similar to the cross-margin program that was approved by the Commission and the Commodity Futures Trading Commission (''CFTC'') for listed options market-makers and proprietary accounts of clearing member organizations. There is one major difference in that a securities account would be used instead of a futures account and, therefore, SEC customer protection rules and insurance coverage by the Securities Investor Protection Corporation (''SIPC'') would apply instead of CFTC rules concerning customer protection and liquidation proceedings. For determining theoretical gains and losses, and resultant margin requirements, the same portfolio margin computation program will be applied to portfolio margin accounts that contain a cross-margin element, to portfolio margin accounts that do not contain a cross-margin element, and to portfolio margin accounts used exclusively for cross-margining.

c. Margin or Minimum Equity Deficiency

Under proposed CBOE Rule 12.4(h), positions in a portfolio margin account would be valued at current market prices, as currently defined in the Exchange's margin rules. Under the proposed rule change, account equity would be calculated and maintained separately for each portfolio margin account. For purposes of the $5 million minimum account equity requirement, all accounts owned by an individual or entity may be combined. Proposed CBOE Rule 12.4(i) requires that additional margin must be obtained with one business day (T+1) whenever equity is below the margin required, regardless of whether the deficiency is caused by the addition of new positions, the effect of unfavorable market movement on existing positions, or a combination of both. The portfolio margin requirement, therefore, would be both the initial and maintenance margin requirement, and no differentiation would be necessary. In addition, proposed CBOE Rule 12.4(g) would require that, in the event account equity falls below the $5 million minimum, additional equity must be deposited within 3 business days (T+3). If the deficiency were not resolved within 3 business days, the carrying member organization would be prohibited under the proposed rule change from accepting any new opening orders beginning on T+4, with the exception of opening orders that hedge existing positions. This prohibition would remain in effect until a $5 million equity was established.

d. Risk Disclosure Statement and Acknowledgement

In addition, the Exchange proposes that member organizations provide every portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account.[13] This disclosure statement highlights the risks and operation of portfolio margin accounts, including cross-margining, and the differences between portfolio margin and strategy-based margin requirements. The disclosure statement is divided into two sections, one dealing with portfolio margining and the other with cross-margining. The disclosure statement clearly notes that additional leverage is possible in an account margined on a portfolio basis in relation to strategy-based margin. Among other things, the disclosure statement covers who is eligible to open a portfolio margin account, the instruments that are allowed, and when deposits to meet margin and minimum equity are due. The fact that long option positions held in a portfolio margin account are not segregated, as they generally would be in the case of a regular margin account under the Commission's customer protection rules, is explained. Also included within the portfolio margin section is a summary list of the special risks of portfolio margin accounts, such as: increased leverage; shorter time for meeting margin; involuntary liquidation if margin not received; inability to calculate future margin requirements because of the data and calculations required; and that long positions are subject to a lien. The risks and operation of a cross-margin feature are outlined in the cross-margin section of the disclosure statement, and a summary list of the special risks associated with cross-margining is included.

Further, at or prior to the time a portfolio margin account is initially opened, member organizations would be required to obtain a signed acknowledgement concerning portfolio margining in general from the customer. In addition, prior to accommodating cross-margining, member organizations would be required to obtain a second signed acknowledgement within the same time frame that pertains to cross-margin.

By signing the general acknowledgement required of all customers, the customer would attest to having read the disclosure statement and being aware of the fact that long option positions in a portfolio margin account (which includes cross-margin accounts) are not subject to the segregation requirements under the customer protection rules of the Commission, and would be subject to a lien by The OCC. In signing the

[12] CBOE believes that it is imperative that these market move ranges be competitive with the range used in the futures industry for computing margin (performance bond) on broad-based index futures. The proposed ranges accomplish this goal. Customer performance bond in the futures industry is computed using a portfolio margining system known as the Standard Portfolio Analysis of Risk (''SPAN''). The terms ''high capitalization'' and ''non-high capitalization'' have the same meaning as they do for the purposes of risk-based haircuts (Rule 15c3–1 under the Act, 17 CFR 240.15c3–1).

[13] Even a customer that engages exclusively in cross-margining is a portfolio margin customer, as the proposed rule change permits cross-margining to be conducted only by applying the portfolio margin methodology.

additional acknowledgement applicable to cross-margining, the customer would attest to having read the disclosure statement and being aware of the fact that futures positions are being carried in a securities account, are subject to the Commission's customer protection rules,[14] and fall under the authority of the SIPC in the event the carrying broker-dealer becomes financially insolvent. Within Chapter 9 of the Exchange's rules (''Doing Business with the Public''), the Exchange would prescribe the format of the written disclosure statement and acknowledgements in proposed Exchange Rule 9.15(d)—Delivery of Current Options Disclosure Documents and Prospectus. Like a current Exchange rule that prescribes the format for a Special Statement for Uncovered Options Writers (CBOE Rule 9.15(c)), proposed Exchange Rule 9.15(d) would allow member organizations to develop their own format, provided it contains substantially similar information and it is approved in advance by the Exchange.

e. Net Capital

The Exchange also proposes to add a new requirement in CBOE Rule 13.5 to mandate that the gross customer portfolio margin requirements of a broker-dealer may at no time exceed 1,000 percent of a carrying broker-dealer's net capital (a 10:1 ratio). This requirement is intended to place a ceiling on the amount of margin a broker-dealer can extend to its customers in relation to its net capital.

f. Internal Risk Monitoring Procedures

The Exchange further proposes a separate, related rule that would require member organizations that carry portfolio margin or cross-margin accounts to establish and maintain written procedures for assessing and monitoring the potential risks to their capital. Specifically, proposed CBOE Rule 15.8A (Risk Analysis of Portfolio Margin and Cross-Margin Accounts) would require that the member organization file and maintain its current procedures with its DEA, and provide the DEA with such information as the DEA may reasonably require regarding the member organization's risk analysis of any and all portfolio margin and cross-margin accounts carried for customers. Proposed CBOE Rule 15.8A would incorporate current Exchange Rule 15.8—Risk Analysis of Market-Maker Accounts—by reference to require that the risk analysis be conducted in the same manner as prescribed in Exchange Rule 15.8. Additionally, proposed CBOE Rule 15.8A would set forth certain undertakings that must be included in the written procedures (*e.g.*, review and approval of credit limits for each customer and across all accounts).

Because member organizations would be required under the proposed rule change to have risk monitoring procedures, proposed CBOE Rule 12.4(i) states that the current CBOE Rule 12.9—Meeting Margin Calls by Liquidation Prohibited—prohibiting excessive liquidations to meet margin requirements will not apply to portfolio margin and cross-margin accounts. Furthermore, given the proposed risk monitoring procedures, CBOE proposes that day trading margin requirements would not apply to portfolio margin and cross-margin accounts.[15] Through these risk-monitoring procedures, member organizations will be expected to oversee portfolio margin and cross-margin accounts for excessive liquidations and day trading and take appropriate action according to their procedures.

It should be noted that the disclosure statement delivery requirement, the $5 million minimum equity requirement, and the next day deposit condition for additionally required margin were all added by the Portfolio Margin Committee. The Portfolio Margin Committee deemed these requirements prudent given that less margin is generally required under a portfolio margining approach than under the current strategy-based methodology, and these measures made the plan entirely acceptable to the member firm representatives.

g. Margin at the Clearing House Level[16]

The Exchange proposes that all customer portfolio margin account transactions not involving a futures transaction (*e.g.,* cross-margin) be cleared in one special omnibus account for the clearing firm at The OCC. In addition, the Exchange proposes that all transactions involving cross-margining, both the security and futures product, be cleared in one of two additional special omnibus accounts for cross-margining, depending on the entity that clears the futures product being cross-margined. One cross-margin omnibus account corresponds to a cross-margining agreement between The OCC, the CME and the New York Clearing Corporation. The other omnibus account corresponds to a cross-margining agreement between The OCC and the Board of Trade Clearing Corporation. The OCC will compute margin for the special omnibus accounts using the same portfolio margin methodology applied at the customer level. The OCC will continue to require full payment from the clearing firm for all long option positions. However, as previously noted, long positions will not be segregated like they are in the firm's regular customer range account at The OCC. This is necessary and preferred with a portfolio margining methodology because all long positions must be available for margin offset. Margin relief is based on a dollar offset basis as opposed to identifying specific contract to contract offsets under a strategy-based methodology. This may result in situations where the long positions of a given customer could serve to offset the risk in another customer's short position. Long positions would, therefore, be subject to The OCC lien. An OCC clearing member currently has the ability to unsegregate a long position in order to pair it with a short position (contract to contract basis) and form a qualified spread. Under the proposed treatment of long positions in a portfolio margin omnibus account at The OCC, all long positions would be unsegregated, freeing The OCC clearing member from the task of determining which long positions offset risk and from specifying each position to be unsegregated.

h. Rationale for Portfolio Margin

Portfolio margining brings a modern approach to quantifying risk and offers a number of efficiencies. It eliminates the task of analyzing the portfolio and sorting it according to currently recognized strategies (*e.g.,* spreads), and computing a margin requirement for each individual position or strategy. This process becomes quite cumbersome in an account with

[14] As disclosed in the general acknowledgement form (required of any portfolio or cross-margin customer), portfolio margin and cross-margin accounts operate pursuant to an exception to the customer protection rules in that fully paid long positions will not be segregated.

[15] The CBOE currently does not have a day-trading margin rule. Accordingly, the proposal to make day trading margin requirements inapplicable to portfolio margin and cross-margin accounts would not apply until CBOE has filed, and the Commission has approved, a proposed rule change relating to day trading margin. Telephone conversation between Richard Lewandowski, Vice President, Division of Regulatory Services, CBOE, and Hong-Anh Tran, Special Counsel, Division of Market Regulation (''Division''), Commission, on February 12, 2002. The NYSE and the National Association of Securities Dealers, Inc. (''NASD'') have day trading margin rules and the CBOE does review its member organizations as necessary for compliance with day trading rules when the member is also a NYSE member or a NASD member.

[16] The Commission anticipates that the clearing arrangements described in this section will be the subject of a separate proposed rule change filed by The OCC.

multiple positions and complex strategies. More importantly, for a given market move, up or down, in a diverse portfolio there will be listed option positions that appreciate and other option positions that will depreciate. Under a portfolio margin system, offsets are fully realized, whereas, under the current strategy-based system, positions and/or a group of positions comprising a single strategy are margined independent of each other and offsets between them do not figure into the total margin requirement as efficiently. In addition, under a portfolio margin system, the volatility of an individual listed option series is used in the theoretical pricing model that renders the price used to compute a gain/loss on that option position at each valuation point. This links the margin required to the risk in each particular position in contrast to the strategy-based margin. Strategy-based margin applies a universal percentage requirement (of the underlying index value) to all short option positions in the same category (*e.g.,* broad-based), irrespective of the fact that all options prices do not change equally (in percentage terms) with a change in the price or level of the underlying instrument.

Theoretical options pricing models have become widely accepted and utilized since Fischer Black and Myron Scholes first introduced a formula for calculating the value of a European style option in 1973.[17] Other formulas, such as the Cox-Ross-Rubinstein model have since been developed. Option pricing formulas are now used routinely by option market participants to analyze and manage risk and have proven to be highly effective and preferred. In addition, essentially the same portfolio methodology described above has been used successfully by broker-dealers since 1994 to calculate haircuts on option positions for net capital purposes.[18]

The Board of Governors of the Federal Reserve System (the ''Federal Reserve Board'' or ''FRB'') in its amendments to Regulation T in 1998 permitted SROs to implement portfolio margin rules, provided they are approved by the Commission.[19] A portfolio margin system recognizes the offsetting gains from positions that react favorably in market declines, while market rises are tempered by offsetting losses from positions that react negatively. A portfolio margin approach can thus have a neutralizing effect on option portfolio volatility. In times of market stress, the current strategy-based margin can result in margin calls and forced liquidations, thus contributing to the selling pressure in the market. The offset ability of portfolio margining can alleviate the need for liquidations, slowing acceleration of volatility in a crisis.

More recently, the FRB encouraged the development of a portfolio margin approach in a letter to the Commission and the CFTC delegating authority to the agencies to jointly prescribe margin regulations for security futures products.[20] In that letter, the FRB wrote that it ''has encouraged the development of [portfolio margin approaches] by, for example, amending its Regulation T so that portfolio margining systems approved by the Commission can be used in lieu of the strategy-based system embodied in the Board's regulation.'' The FRB concluded that letter by writing ''The Board anticipates that the creation of security future products will provide another opportunity to develop more risk sensitive, portfolio-based approaches for all securities, including security options and security futures products.''

An ability to cross-margin listed index options with index futures, and options on such futures, is critical because many professional investors hedge their listed index options with futures. Although haircuts assessed on broker-dealers with respect to computing their net capital requirement recognize offsets between securities index options and index futures, current margin practice does not allow these offsets. Cross-margin benefits the financial markets and clearing system in general, not just individual investors. Cross-margin would reduce the number of forced liquidations. Currently, an option (securities) account and futures account of the same customer are viewed as separate and unrelated. In addition, currently an option account must be liquidated if the risk in the positions has increased dramatically or margin calls cannot be met, even if gains in the customer's futures account offset the losses in the options account. If the accounts can be combined (*i.e.*, cross-margin), there is little or no net change in risk and unnecessary liquidation can be avoided. The severity of a period of high volatility in the market is lessened if the number of liquidations is reduced because, for example, liquidating into a declining market exacerbates the decline. A capability to cross-margin listed index options and index futures would further alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility, particularly in times of market downturns. Various government agencies and task groups have previously advocated implementation of a cross-margin system. Those groups include the Presidential Task Force on Market Mechanics (also known as the Brady Commission)[21] and the Commission.[22]

Listed index options are now at a disadvantage to economically equivalent derivative products traded on futures exchanges in terms of margin requirements. Since 1988, index futures and options have been margined under a portfolio margin system known as SPAN. While the risks of listed index options are no greater than an equivalent position in an index future or option on the future, margin required on listed securities index options is significantly higher in many cases. Currently, listed index options margin (excluding the option premium) for a short at-the-money contract approximates 15% of the underlying index value while SPAN margin on a comparable futures index option contract is approximately 6% of the index value. When faced with such a disparity, investment managers discerningly choose futures products over listed index options for their hedging to reduce their costs. A portfolio style margin application for listed index options will reduce disparities between securities index options and futures products, thus making listed index products more competitive and more effective tools for investors.

Relief provided by a portfolio margin system is also needed so that listed index options can compete with over-the-counter derivatives, which can be

[17] In 1997, Fischer Black and Myron Scholes were awarded a Nobel Prize for the development of an options pricing formula.

[18] On March 15, 1994, the Commission issued a no-action letter allowing the implementation of a risk-based haircut pilot program. *See* letter from Brandon Becker, Director, Division, Commission, to Mary Bender, First Vice President, Division of Regulatory Services, CBOE, and Timothy Hinkes, Vice President, The OCC, dated March 15, 1994. The risk-based haircut program took full effect on September 1, 1997. *See* ''Net Capital Rule,'' Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997).

[19] *See* Federal Reserve System, ''Securities Credit Transactions; Borrowing by Brokers and Dealers''; Regulations G, T, U and X; Docket Nos. R–0905, R–0923 and R–0944, 63 FR 2806 (January 16, 1998).

[20] *See* letter from the FRB to James E. Newsome, Acting Chairman, CFTC, and Laura S. Unger, Acting Chairman, Commission, dated March 6, 2001.

[21] *See* ''The Brady Report,'' Report of the Presidential Task Force on Market Mechanisms, January 1988, p. 59 and pp. 65–66.

[22] *See* ''The October 1987 Market Break: Report by the Division,'' Commission, February 1988, pp. 10–57. *See also* the interim report of the ''Working Group on Financial Markets,'' (Department of the Treasury, CFTC, Commission and FRB), May 1988, Appendix D III A.

margined on a good faith basis if hedged with a listed option.[23]

2. Statutory Basis

The Exchange believes that the proposed rule change described above is consistent with the provisions of section 6(b) of the Act,[24] in general, and specifically furthers the objectives of section 6(b)(5) of the Act,[25] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest. The proposed portfolio margin rule change is intended to promote greater reasonableness, accuracy and efficiency in respect of Exchange margin requirements for complex, multiple position listed index option strategies, and to offer a cross-margin capability with related index futures positions in eligible accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B)institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–03 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

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[23] *See* ''OTC Derivatives Dealers,'' Securities Exchange Act Release No. 40594, (October 23, 1998), 63 FR 59362 (November 3, 1998).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45638; File No. SR–NASD–2002–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Certificates of Designation for Preferred Stock of the Nasdaq Stock Market, Inc.

March 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. 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

Nasdaq is filing Certificates of Designations, Preferences and Rights (''Certificates of Designation'') of Series A Cumulative Preferred Stock (''Series A Preferred'') and Series B Preferred Stock (''Series B Preferred,'' collectively ''Series A and B Preferred'') authorized to be issued to the NASD. The Series A and B Preferred will be issued as part of a transaction designed to reduce the NASD's economic interest in Nasdaq to the greatest extent practicable while maintaining the NASD's voting control until Nasdaq begins operating as a national securities exchange. Under Section 151(g) of the General Corporation Law of the State of Delaware (''Delaware Law''), such Certificates of Designation are deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation. Pursuant to Rule 19b–4(f)(3),[3] Nasdaq has designated this filing as one concerned solely with the administration of the self-regulatory organization because the authorization and issuance of the Series A and B Preferred result in no substantive change in the NASD's control of Nasdaq until exchange registration, and as such, the filing is immediately effective. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing the Certificates of Designations described below. Under Article Fourth, Paragraph B of Nasdaq's Restated Certificate of Incorporation, the Nasdaq Board may authorize the issuance of preferred stock and fix its designation, powers, preferences and

[3] 17 CFR 240.19b–4(f)(3).

rights, as well as any qualifications, limitations, and restrictions on it. Under Delaware Law, such Certificates of Designation are deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation, and as such, Nasdaq is filing the Certificates of Designation with the Commission.

The issuance of the Series A and B Preferred is part of a transaction between the NASD and Nasdaq to reduce the NASD's ownership interest in Nasdaq while maintaining the NASD's control over Nasdaq until exchange registration. The Series A Preferred will pay a dividend and is non-voting unless Nasdaq fails to pay a timely dividend. In such case, Nasdaq must increase the size of its Board to add two directors elected by the holders of the Series A Preferred. Such directors would be required to resign upon the payment of the dividend or the redemption of the Series A Preferred. The NASD may not transfer the Series A Preferred without the prior written consent of Nasdaq for a period of one year from its issuance.

Nasdaq is currently discussing with the Commission staff how Nasdaq intends to meet its obligation for fair representation of members on its Board under Section 6(b)(3) of the Act [4] if Nasdaq obtains approval of its exchange registration application. As a result of these discussions, Nasdaq may submit to the Commission amendments to its By-Laws with respect to its Board composition. The potential By-Law amendments under discussion could require the election of additional Board members if the Series A Preferred holder's right to elect Board members is triggered to ensure that the fair representation obligation is met at all times.

The Series B Preferred is a single share designed to ensure that the NASD maintains voting control over Nasdaq until exchange registration. The Series B Preferred is not transferable and must be redeemed when Nasdaq begins operating as a national securities exchange. The Series B will vote, together as one class with Nasdaq's common stock, on all matters submitted to a vote of holders of common stock. The Series B Preferred will have variable voting rights such that the number of votes entitled to be cast by the holder of the Series B Preferred shall equal that number of votes that, together with votes otherwise entitled to be cast by the holder of the Series B Preferred at such meeting, whether by virtue of share ownership, proxies, voting trust arrangements or otherwise, entitle the holder to exercise one vote more than one-half of all votes entitled to be cast. These voting rights will terminate automatically upon Nasdaq commencing operation as a national securities exchange.

The Series A and B Preferred have no effect on the voting trust that governs the warrants to purchase Nasdaq common stock that were sold by the NASD in two private placements that closed in June 2000 and January 2001.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Sections 15A(b)(2) and (6) of the Act,[5] which require, among other things, that the Association be so organized and have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act, and that the Association's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the issuance of this preferred stock will result in no substantive change in its current relationship to the NASD; as under the current ownership structure, the NASD will continue to control Nasdaq until exchange registration.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is concerned solely with the administration of the self-regulatory organization and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (f)(3) of Rule 19b–4 [7] thereunder. 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–2002–36 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7610 Filed 3–28–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b)(3).

[5] 15 U.S.C. 78*o*–3(b)(2) and (6).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45622; File No. SR–Phlx–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modified Capitalization Weighting Methodology for Index Options

March 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on March 1, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1009A(b), Designation of the Index, to include modified capitalization weighting as an approved weighting methodology for index options.

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 Phlx 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 Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase and diversify the number and types of securities products the Exchange may offer to the investing public by including modified capitalization weighting as a methodology for index options under Phlx Rule 1009A(b). Increasingly, the Exchange receives requests to trade new indexes using the modified capitalization weighting methodology; accordingly, in order to accommodate those requests in a timely manner and respond to market demand, the Exchange seeks to permit this calculation methodology for narrow-based indexes. The Exchange wishes to accommodate these requests, and proposes to add this methodology to the existing narrow based criteria set forth in Phlx Rule 1009A(b) which permits the listing of options on stock index groups pursuant to Rule 19b–4(e) under the Act. Currently, Phlx Rule 1009A requires an index to be calculated using the capitalization-weighted, price-weighted, or equal dollar-weighted methodologies. Use of the modified capitalization weighted methodology should allow the Exchange greater flexibility in developing indexes and facilitate the listing of options on stock industry index groups that more accurately reflect the industry represented by the index.

When determining the value using capitalization weighting methodology, the following calculation applies: multiply the primary exchange regular way last sale price of each component security by the number of shares outstanding, add the result for each product and divide the sum by the current index divisor. The index value for a modified capitalization-weighted index is calculated in a similar manner. However, instead of using the actual number of shares outstanding, an adjusted number of shares outstanding are used in the calculation. (Thus, the following calculation applies: multiply the primary exchange regular way last sale price of each component security by an adjusted number of shares outstanding, add the results for each product, and then divide the sum by the current index divisor). The adjusted number of shares is determined by a proprietary algorithm. When using the modified capitalization weighting the Exchange will use a calculation methodology that will be clearly defined, and will consist of objective standards in accordance with the generic criteria set forth in Phlx Rule 1009A. In addition, the terms of the index will be defined in the marketing materials describing a new index and in the circulars that the Exchange distributes to its members upon the launch of a new index option.

The modified capitalization weighting methodology uses an adjusted number of shares outstanding to prevent component companies with a relatively high market capitalization from representing an inordinately large portion of an index's value. For example, inclusion of a company that is highly capitalized, in relation to the other smaller capitalized companies in the index, may result in the higher capitalized company's representation in the index exceeding 25% of the index's value. Thus, options on these indexes could not be listed on the Phlx. However, because use of the modified capitalization methodology permits a reduction in the higher capitalized company's representation in the index to an amount less than 25% of the index's value, the listing criteria of Phlx Rule 1009A(b)(6) are satisfied. Therefore, modifying the capitalization amounts of the securities underlying an index can prevent an individual stock from inappropriately skewing the performance of an entire index, thus market accuracy and transparency should be correspondingly enhanced by use of the modified capitalization methodology. Currently, indexes such as the Nasdaq 100 [3] and Fortune e–50 [4] utilize modified capitalization weighting. Thus, it is an established calculation methodology that the Exchange seeks to capture in its listing standards.

Additionally, the Exchange will review the component weightings of indexes employing the modified capitalization weighting methodology at least semi-annually (or pursuant to then-existing standards), and if necessary, adjust them to ensure that the index continues to meet the weighting guidelines. Also, adjustments will be made on an intra-semi-annual basis, as necessary, to reflect corporate actions such as, share issuances, repurchases and other events of significance.

2. Statutory Basis

For these reasons, the Exchange believes that this proposal is consistent with Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in that this proposal is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect the investors and the public interest, by encouraging and adding flexibility to the development of new indexes, thereby, increasing the amount of new products available to the investing public, consistent with the purposes of option listing standards. Specifically, the Exchange seeks to list new index options based on this calculation methodology.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[3] The Nasdaq–100®, Nasdaq–100 Index®, and Nasdaq® are trade or service marks of The Nasdaq Stock Market, Inc.

[4] The Fortune e–50® is a trade or service mark of the American Stock Exchange LLC.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and subparagraph (f)(6) of Rule 19b–4 thereunder. [8] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission notes that under Rule 19b–4(f)(6)(iii),[9] the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate that the proposed rule change become operative immediately, which the Phlx believes is consistent with investor protection and the public interest. In particular, because the proposed rule change is significantly similar to the rules of another self-regulatory organization already approved by the Commission,[10] the Exchange requests that Commission accelerate the operative date to promptly begin eligibility of modified capital weighted indexes for option trading.

The Commission believes that it is consistent with the protection of investors and the public interest to designate the proposal immediately operative.[11] Accelerating the operative date will permit the Exchange to implement Phlx Rule 1009(b) without undue delay. For this reason, the Commission finds good cause to designate that the proposal become operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with 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 Section. 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–2002–14 and should be submitted by April 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7567 Filed 3–28–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] *See* Securities Exchange Act Release No. 41557, June 24, 1999, 64 FR 36055 (July 2, 1999) (Order approving File No. SR–Amex–99–09 to allow modified equal-dollar and modified capitalization weighting calculation methodologies for narrow-based index options on the American Stock Exchange LLC).

[11] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45629; File No. SR–Phlx–2001–89]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to an Increase in the Maximum Guaranteed Size for AUTO–X Eligible Orders in Options on the Nasdaq-100 Index Tracking Stock (''QQQ'') from 100 Contracts to 250 Contracts

March 22, 2002.

I. Introduction

On September 27, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase its automatic execution guarantee for options overlying the QQQ from 100 contracts to 250 contracts. On October 9, 2001, the Phlx filed Amendment No. 1 to the proposed rule change.[3] On November 15, 2001, the proposed rule change and Amendment No. 1 were published for public comment in the **Federal Register**.[4] The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The Exchange proposes to increase the maximum order size eligibility for its automatic execution system (''AUTO–X'') in QQQ options from 100 contracts to 250 contracts. Under the rules of the Phlx, through AUTOM,[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 5, 2001 (''Amendment No. 1''). In Amendment No. 1, the Phlx changed the status of the proposal from a filing made pursuant to Section 19(b)(3)(A) of the Act to a filing made pursuant to Section 19(b)(2) of the Act.

[4] *See* Securities Exchange Act Release No. 45046 (November 7, 2001), 66 FR 57500.

[5] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually or routed to AUTOM's automatic execution feature, AUTO–X, if they are eligible for execution on AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features

Continued

orders are routed from member firms directly to the appropriate specialist on the trading floor. Of the public customer market and marketable limit orders routed through AUTOM, certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. These orders are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.[6]

The Exchange represents that AUTO–X affords prompt and efficient automatic executions at the disseminated quotation price on the Exchange. Therefore, the Exchange believes that increasing automatic execution levels for eligible orders in QQQ options from 100 contracts to 250 contracts should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase in the automatic execution levels in QQQ options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQ options.

The Exchange notes that there are many safeguards incorporated into Exchange rules to ensure the appropriate handling of AUTO–X orders. For example, Phlx Rule 1080(f)(iii) states that the specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs execution guarantees and requires the trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. In addition, Phlx Options Floor Procedure Advice F–7 provides that the size of any disseminated bid or offer by the Exchange shall be equal to the AUTO–X guarantee for the quoted option and shall be firm, except that the disseminated size of bids and offers of limit orders on the book shall be 10 contracts and shall be firm, regardless of the actual size of the orders. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

The Wheel is a mechanism that allocates AUTO–X trades among specialists and Registered Options Traders (''ROTs'').[7] An ROT has discretion to participate on the Wheel to trade any option class to which he is assigned. The Exchange states that an increase in the maximum AUTO–X order size in QQQ options would not prevent an ROT from declining to participate on the Wheel. The Exchange states that, because the Wheel rotates in two-lot to ten-lot increments depending upon the size of the order,[8] no single ROT will be allocated the entire 250 contracts.

The Exchange also has procedures that permit a specialist to disengage AUTO–X in extraordinary circumstances.[9] The Exchange represents that AUTOM users will be notified of such circumstances.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital requirement respecting ROTs.[10] Furthermore, an ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. The Exchange believes that clearing firm procedures address the issue of whether an ROT has the financial capability to support the AUTO–X trading of orders in QQQ options as large as 250 contracts.

The Exchange believes that automatic execution of orders in QQQ options for up to 250 contracts should provide customers with quicker executions for a larger number of orders by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. The Exchange also believes that increasing the AUTO–X maximum order size in QQQ options should not impose a significant burden on operation or capacity of the AUTOM system and will give the Exchange better means of competing with other options exchanges for order flow.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[11] Among other provisions, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.[12]

While increasing the maximum order size limit in QQQ options from 100 contracts to 250 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the Phlx will need to monitor and address. Increasing the maximum order size for QQQ options will make a larger number of QQQ option orders eligible for AUTO–X. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. The specialists and ROTs signed onto AUTO–X will be exposed to the financial risks associated with larger-sized orders in QQQ options being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through AUTO–X, the greater the risk the specialists and ROTs must be willing to accept. The Commission does not believe that, because the Phlx's Options Committee determines to approve orders as large as 250 contracts in QQQ options as eligible for AUTO–X, the Options Committee or any other Phlx committee or officials should disengage AUTO–X more frequently by, for example, declaring an ''extraordinary circumstance.''[13] Disengaging AUTO–X can negatively affect investors by making it slower and less efficient to execute their orders. It is the Commission's view that the Phlx, when increasing the maximum size of orders that can be sent through AUTO–X, should not disadvantage all customers—the vast majority of whom enter orders for less than 250 contracts

and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[6] *See* Phlx Rule 1080(c).

[7] Unlike ROTs, specialists are required to participate on the Wheel. *See* Phlx Rule 1080(g).

[8] *See* Exchange Options Floor Procedure Advice F–24(e).

[9] *See* Phlx Rule1080(e) and Exchange Options Floor Procedure Advice A–13.

[10] *See* Phlx Rule 703.

[11] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The Phlx has filed a proposed rule change (File No. SR–Phlx–2001–27) with the Commission that would specify the procedures governing the disengagement of AUTO–X for ''extraordinary circumstances,'' define what constitutes ''extraordinary circumstances,'' and require the documentation of any action taken to disengage AUTO–X. The proposed rule change was filed pursuant to the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282) and is pending with the Commission.

in QQQ options—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[14]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR-Phlx-2001–89), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7612 Filed 3–28–02; 8:45 am]

BILLING CODE 8010–01–U

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3398]

State of Ohio

Lorain County and the contiguous counties of Ashland, Cuyahoga, Erie, Huron, and Medina in the State of Ohio constitute a disaster area due to damages caused by a fire at the Fairway Manor Apartments on March 9, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 20, 2002 and for economic injury until the close of business on December 21, 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.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere—*6.625%*

Homeowners Without Credit Available Elsewhere—*3.312%*

Businesses With Credit Available Elsewhere—*7.000%*

Businesses and Non-Profit Organizations Without Credit Available Elsewhere—*3.500%*

Others (Including Non-Profit Organizations) With Credit Available Elsewhere—*6.375%*

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—*3.500%*

The number assigned to this disaster for physical damage is 339805, and for economic injury the number is 9O9600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 21, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–7642 Filed 3–28–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.125 (5⅛) percent for the April–June quarter of FY 2002.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 02–7721 Filed 3–28–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3965]

Culturally Significant Objects Imported for Exhibition Determinations: ''Masterpieces and Master Collectors: Impressionist and Early Modern Paintings from the Hermitage and Guggenheim Museums''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that two additional objects to be included in the exhibition ''Masterpieces and Master Collectors: Impressionist and Early Modern Paintings from the Hermitage and Guggenheim Museums,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Hermitage Museum, Las Vegas, NV, from on or about April 9, 2002, to on or about August 12, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 25, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–7643 Filed 3–28–02; 8:45 am]

BILLING CODE 4710–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Aviation Proceedings, Agreements Filed During the Week Ending March 15, 2002

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–2002–11825.

Date Filed: March 12, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC12 NMS–AFR 0135 dated 15 March 2002, Mail Vote 210—TC12 Mid Atlantic-Africa, Special Passenger Amending Resolution 010j r1–r6. PTC12 NMS–AFR 0136 dated 15 March 2002, Mail Vote 211—TC12 Mid Atlantic-Africa, Special Passenger Amending Resolution 010k r7–r12. Intended effective date: 15 April 2002, 30 April 2002.

Docket Number: OST–2002–11849.

Date Filed: March 14, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC12 MEX–EUR 0047 dated 19 February 2002, TC12 Mexico-Europe Resolutions r1–r20, Minutes—PTC12 MEX–EUR 0048, dated 15 March 2002. Tables—PTC12 MEX–EUR Fares 0019,

dated 22 February 2002. Intended effective date: 1 May 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–7716 Filed 3–28–02; 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 March 15, 2002

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–2002–11861.

Date Filed: March 15, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 5, 2002.

Description: Application of Sun Country Airlines, Inc. (Sun Country) and MN Airlines, LLC (MNA), pursuant to 49 U.S.C. 41102 and Subpart B, requesting transfer of Sun Country's air carrier certificate authority to MNA.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–7717 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD17–02–001]

Application for Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of the application for recertification submitted by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) for March 1, 2002 through February 28, 2003. Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Prince William Sound.

DATES: Comments must reach the Seventeenth Coast Guard District on or before April 29, 2002.

ADDRESSES: You may mail your comments to the Seventeenth Coast Guard District (mor), P.O. Box 25517, Juneau, AK 99802–5517. You may also deliver them to the Juneau Federal Building, room 753, 709 W. 9th St, Juneau, AK between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Seventeenth Coast Guard District maintains the public docket for this recertification process. Comments regarding recertification will become part of this docket and will be available for inspection or copying at the Juneau Federal Building, room 753, 709 W 9th St.

A copy of the application is also available for inspection at the Prince William Sound Regional Citizens' Advisory Council Offices at 3709 Spenard Road, Suite 100, Anchorage, AK 99503 and 339 Hazelet, Valdez, AK 99686. The telephone number in Anchorage is (907) 277–7222 and the telephone number in Valdez is (907) 835–5957.

FOR FURTHER INFORMATION CONTACT: For questions on viewing or submitting material to the docket contact LT Ryan Murphy, Seventeenth Coast Guard District (mor), (907) 463–2817.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. It solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of PWSRCAC. Persons submitting comments should include their names and addresses, identify this notice (CGD17–02–001) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (m), Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802–5517. The request should include reasons why a hearing would be beneficial.

If there is sufficient evidence to determine that oral presentations will aid this recertification process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36505), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act. Most recently, on December 28, 2000 (65 FR 82451) the Coast Guard published a proposal and request for comments to streamline the RCAC certification process. The comments received on that proposal are under review prior to implementing changes to the certification process.

The Coast Guard has received an application for certification of PWSRCAC, the currently certified advisory group for the Prince William Sound region. In accordance with the review and certification process contained in the policy statement, the Coast Guard announces the availability of that application.

At the conclusion of the comment period, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify PWSRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: March 4, 2002.

T.J. Barrett,

Rear Admiral, Coast Guard Commander, Seventeenth Coast Guard District.

[FR Doc. 02–7570 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–8229]

Notice of Availability, Final Programmatic Environmental Impact Statement for the Integrated Deepwater System Project

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Final Programmatic Environmental Impact Statement (PEIS) on the Integrated Deepwater System Project. This PEIS covers general issues in a broad program-oriented analysis encompassing the replacement systems proposed by industry and the No-action alternative. The Coast Guard seeks public and agency input on the Final PEIS.

DATES: The PEIS will be available on March 29, 2002. Comments must reach the Coast Guard on or before April 29, 2002.

ADDRESSES: Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility [USCG–2000–8229], US Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available along with the Final Programmatic Environmental Impact Statement for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, expect for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated statement, call LCDR Eric Johnson, Deepwater Environmental & Facilities Planner by telephone at 202–267–1665, or by e-mail at *ejohnson@comdt.uscg.mil* or at the Coast Guard's Deepwater EIS Web page at *http://www.deepwatereis.com/.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

NEPA provides for a 30-day comment period after publication of the Final PEIS, during which the public may comment on the adequacy of responses to comments and the Final PEIS. Persons submitting comments should include their names and addresses, identify the docket number [USCG–2000–8229], and the reason for each comment. You may submit your comments by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address given under Addresses, but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. For additional information about this notice of the Programmatic Environmental Impact Statement, contact Joan Lang, Deepwater Program NEPA Coordinator (under contract to the Coast Guard), 202–267–0284 or via e-mail at *jlang@comdt.uscg.mil.*

Proposed Action

In accordance with section 202[2][c] of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), Department of Transportation (DOT) Order 5610.1C (Procedures for Considering Environmental Impacts), and Coast Guard Policy (NEPA: Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D), the Coast Guard has prepared a Final PEIS on the Deepwater Program. The purpose of a PEIS is to develop a high-level approach and direction for implementing a broad policy or program. The Deepwater Program meets those criteria. As a first tier EIS, this PEIS covers general issues in a broader program-oriented analysis encompassing the replacement systems proposed by industry and the No-action alternative. Subsequent NEPA documentation will concentrate on specific implementing actions, such as home basing of new ships and aircraft, as required.

The Coast Guard published a Notice of Intent and Request for Public Comments on November 9, 2000 (65 FR 67441). That same Notice included the dates and locations of several meetings that were held around the country to accept comments on what the Coast Guard should consider in its PEIS. During this scoping process, and based on Federal Agency comments, it was determined that the PEIS should address two alternatives: Action and No-action. The Action Alternatives includes the proposed system replacements discussed in the NOI. The Coast Guard determined that the best way to describe the impacts of the Action Alternative in the programmatic EIS was by combining all of the proposals into ranges of asset quantities and types and ranges of environmental impacts. This approach protects the procurement-sensitive information regarding the specific number and types of assets proposed by each industry team. However, to more accurately identify potential environmental impacts, the actual numbers and types of each teams' assets were used in the impact modes.

The Coast Guard's ability to predict future environmental impacts of this multi-decade acquisition with 100% accuracy is drastically reduced by uncertainties with regard to funding, technology, political, social and logistic changes. When viewed from a programmatic level, these uncertainties more than outweigh any differences that may exist among the various proposed system replacements. Therefore, the use of ranges to show possible impacts from the two alternatives provides an analysis commensurate with the level of detail of the decision being made, protects procurement-sensitive information, and provides the public with sufficient information to submit informed comments.

The specific industry team proposal information will be maintained in the

administrative record for Coast Guard agency use only, as described in the NOI.

The Coast Guard published a Notice of Availability of the Draft Programmatic Environmental Impact Statement on October 26, 2001 (66 FR 54324). Comments were originally due on December 10, 2001. However, due to delivery problems resulting from anthrax concerns, comments were received in January that had been mailed prior to the original deadline. These comments were accepted and included in the Final PEIS. A total of 28 letters were received from various agencies and the public. All comments are discussed, along with any changes made in response to the comments, in Appendix M of the Final PEIS. No requests for public hearings were received.

After the 30-day comment period described in the *Request for Comments* section of this notice, a Record of Decision (ROD) detailing the Coast Guard's decision of the selected alternative will be prepared and published in the **Federal Register**. The entire ROD will be made available for public review at that time.

Dated: March 13, 2002.

P.M. Stillman,

Rear Admiral, U.S. Coast Guard, Program Executive Officer, Integrated Deepwater System.

[FR Doc. 02–7569 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–01–10293 (PD–28(R))]

Town of Smithtown, New York Ordinance on Transportation of Liquefied Petroleum Gas

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Local Laws Affected: Smithtown Town Code Sections 164–108 and 164–109.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Modes Affected: Highway.

SUMMARY: Federal hazardous material transportation law preempts:

(1) The requirement in Section 164–108 of the Smithtown Town Code for a permit to deliver liquefied petroleum gas (LPG) within the Town of Smithtown with respect to trucks that are based outside of Smithtown because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside Smithtown.

(2) the requirement in Section 164–109 of the Smithtown Town Code for a certificate of fitness insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 164–109 imposes on drivers of motor vehicles used to deliver LPG more stringent training requirements than provided in the HMR.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

The Town of Smithtown, New York (the Town) has asked RSPA to determine whether Federal hazardous material transportation law preempts requirements in Sections 164–108 and 164–109 of the Town Code for permits and ''certificates of fitness'' for the delivery of LPG within the Town. According to the Town's application these requirements were adopted in 1983, and they are similar to provisions of Nassau County Ordinance No. 344–1979 that RSPA considered in Preemption Determination (PD) No. 13(R), Nassau County, New York Ordinance on Transportation of Liquefied Petroleum Gases, 63 FR 45283 (Aug. 25, 1998), decision on petition for reconsideration, 65 FR 60238 (Oct. 10, 2000), complaint for judicial review dismissed, *Office of the Fire Marshal of the County of Nassau* v. *U.S. Dep't of Transportation,* Civil Action No. 00–7200 (E.D.N.Y. Mar. 18, 2002). The Town is located on Long Island in Suffolk County, which is adjacent to Nassau County.

In PD–13(R), RSPA found that, as enforced and applied to vehicles based outside Nassau County, that County's permit requirement is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside the County. 65 FR at 60245. RSPA also found that Nassau County's certificate of fitness requirement is preempted insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG because it imposes more stringent training requirements than provided in the HMR. 63 FR at 45288.

In a notice published in the **Federal Register** on August 9, 2001, RSPA invited interested persons to submit comments on the Town's similar permit and certificate of fitness requirements. 66 FR 41931. In response to that notice, RSPA received written comments from National Tank Truck Carriers, Inc. (NTTC) and the National Propane Gas Association (NPGA). The Town submitted a response to NTTC's comments.

RSPA believes that it received all comments on the Town's application despite the disruption of mail delivery to DOT between mid-October and the end of November 2001. On October 25, 2001, DOT posted on its Docket Management System Web site *(http://dms.dot.gov)* a notice that comments could also be submitted in person, electronically, and by alternate delivery services, and that DOT would consider late-filed comments to the extent possible. *See also* DOT's Notice that ''we will do everything possible to ensure that we consider comments that we otherwise would have received before the close of the comment period,'' and advising interested persons ''to check our Dockets Web page * * * to see if we received and processed your document(s).'' 67 FR 1391, 1392 (Jan. 10, 2002). RSPA's procedural regulations specifically provide that ''Late-filed comments are considered so far as practicable'' in a preemption determination proceeding. 49 CFR 107.205(c)

II. Federal Preemption

RSPA explained in its August 9, 2001 notice that 49 U.S.C. 5125 contains express preemption provisions that are relevant to this proceeding. 66 FR at 41933–34. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under Section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation

prescribed under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' 49 CFR 107.202(d).

Subsection (g)(1) of 49 U.S.C. 5125 provides:

A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Public Law 103–272, 108 Stat. 745.)

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 CFR 107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(g)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism.'' 64 FR 43255 (August 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Discussion

A. Inspection and Permit Requirement

According to the Town, the relevant provisions of Section 164–108 are as follows:

A. No person, firm or corporation shall use or cause to be used any motor vehicle, tank truck, tank truck semitrailer or tank truck trailer for the transportation of liquefied petroleum gas unless, after complying with these regulations, a permit to operate any such vehicle has first been secured from the Fire Prevention Division. No permit shall be required under this section for any motor vehicle that is used for the transportation of LPG not operated or registered by an authorized dealer, in containers not larger than 10 gallons' water capacity each (approximately 34 pounds' propane capacity) with an aggregate water capacity of 25 gallons (approximately 87 pounds) or when used in permanently mounted containers on the vehicle as motor fuel. This section shall not apply to any motor vehicle, tank truck, tank truck semitrailer or tank truck trailer traveling through the town and making no deliveries within the town.

B. Permits shall be issued to a vehicle for the transportation of LPG only after a full safety inspection of the vehicle by the Fire Prevention Division and the Fire Marshal approves of the issuance of the permit.

With its application, the Town submitted an affidavit of its Chief Fire Marshal stating that the inspection and permit requirement in Section 164–108 applies to both bulk carriers and rack trucks that are used to deliver LPG within the Town, but that a permit is not required for ''vehicles that are only passing through the Town of Smithtown and not making any deliveries within the Town.'' It appears that a truck would have to be inspected in both the Town and Nassau County (and hold a permit from each) in order to make propane deliveries in both jurisdictions.

The Town Code provides that a permit is valid for one year (Section 164–108.C.), but it does not refer to fees. According to the Chief Fire Marshal, the permit fee is $150 for a new permit, and $75 for a renewal, and these fees ''are used to offset the work performed by the Fire Prevention Division,'' such as ''responding to hazardous material incidents, including, but not limited to, gas leaks and spills.''

The Town acknowledged that ''Section 164–108 is essentially identical'' to the inspection and permit requirement of Nassau County that RSPA has found to be preempted with respect to trucks based outside the jurisdiction performing the inspections and issuing the permit. Nonetheless, the Town asserted in its application that its inspection and permit requirement ''is distinguishable from the Nassau County Ordinance'' because its inspections do not last ''several hours''; they ''are scheduled in advance and scheduling is flexible.'' In his affidavit, the Chief Fire Marshal also stated:

Appointments are available on a monthly basis (with the exception of winter months at the request of the LPG companies) and are made one month prior to the expiration of the permit. Adjustments in scheduling are made for inspections that would be due to expire during a winter month. In order to eliminate the delay in having to wait for the inspection to take place, no more than four trucks are scheduled to be inspected within a 30 minute time frame.

In its responding comments, the Town again argued that RSPA based its finding in PD–13(R) that Nassau County's inspection and permit requirement is preempted with respect to trucks based outside the County ''on evidence that transportation of propane was interrupted for several hours or longer while Nassau County conducted inspections and issued permits.'' The Town stated that, ''[u]nlike the Nassau County inspections, the Town of Smithtown conducts its inspections within a thirty-minute time frame,'' and it referred to the Chief Fire Marshal's affidavit indicating that the inspection of a bulk carrier takes ''from 15 to 20 minutes'' and only ''10 to 15 minutes'' for a rack truck.

NTTC stated that RSPA's decision in PD–13(R) provides the ''ground rules'' regarding a local requirement for an inspection of ''hazmat-laden vehicles.'' It quoted the following language:

A city or county may apply an annual inspection requirement to trucks based outside its jurisdictional boundaries only if the city or county can actually conduct the equivalent of a ''spot'' inspection upon the truck's arrival within the local jurisdiction. The city or county may not require a permit or inspection for trucks that are not based within the local jurisdiction if the truck must interrupt its transportation of propane for several hours or longer in order for an inspection to be conducted and a permit to be issued.

65 FR at 60244.

NPGA agreed that the Smithtown permit requirement ''is substantively identical'' to the same requirement of Nassau County that RSPA found to be preempted in PD–13(R) with respect to trucks based outside the County. NPGA urged RSPA to extend its decision in PD–13(R) to ''companies based outside of the County and those based within the County'' because NPGA ''believes that, under most conditions, permit requirements such as the one [in Nassau County] create obstacles to the safe and efficient transportation of propane for delivery companies based within the jurisdiction.''

NPGA disagreed with RSPA's conclusion in PD–13(R) that it should be possible to schedule an inspection of a truck based within the inspecting jurisdiction ''at a time that does not disrupt or unnecessarily delay deliveries.'' 65 FR at 60243. It stated that, ''[d]uring peak propane delivery seasons, it may be impossible for a propane retailer to take a propane vehicle out of service for inspection.'' NPGA contends that ''the same delay of a loaded vehicle with a hazardous material could occur,'' whether the truck is based within or outside of the inspecting jurisdiction. It stated that, if the ''tens of thousands of state, county and local jurisdictions nationwide . . . required inspections in addition to those already required under the HMRs, the delay of hazardous materials transportation would be indisputable.'' NPGA also stated that ''the Nassau County and Smithtown inspection requirements are duplicative'' of the annual and roadside inspections required under 49 CFR part 396 and the inspection, repair and maintenance requirements for cargo tanks in 49 CFR part 180.

RSPA considers that vehicle and container inspections are an integral part of a program to assure the safe transportation of hazardous materials in compliance with the HMR (including those parts of the Federal Motor Carrier Safety Regulations in 49 CFR parts 390–397 incorporated by reference in the HMR, at 49 CFR 177.804). *See*, for example, 49 CFR 396.17 (annual inspection of motor vehicle); 396.11 and 396.13 (daily inspection by driver); 180.407 (periodic inspection of cargo tanks); 173.34(e) (periodic inspection of cylinders).

RSPA has also specifically found that inspections conducted by State or local governments ''to assure compliance with Federal or consistent requirements are themselves consistent'' with Federal hazardous material transportation law and not preempted. IR–20, Triborough Bridge and Tunnel Authority Regulations, etc., 52 FR 24396, 24398 (June 30, 1987), quoted in PD–4(R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48933, 48940 (Sept. 20, 1993), decision on petition for reconsideration, 60 FR 8800 (Feb. 15, 1995). Accordingly, RSPA ''has encouraged States and local governments to adopt and enforce the requirements in the HMR 'through both periodic and roadside spot inspections.' '' PD–4(R), 58 FR at 48940, and PD–13(R), 63 FR at 45286, quoting from Waiver of Preemption Determination No. 1, New York City Fire Department Regulations, etc., 57 FR 23276, 23295 (June 2, 1992).

To be consistent with Federal hazardous materials transportation law and the HMR, however, a non-Federal inspection of a vehicle or container used to transport a hazardous material must not conflict with the requirement in 49 CFR 177.800(d):

All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

In PD–4(R), RSPA determined that Federal hazardous material transportation law preempts a California requirement for an annual inspection of cargo tanks and portable tanks used to transport flammable and combustible liquids. In that situation, the evidence showed that these tanks were not being inspected for several days (or longer) after their arrival in the State, and RSPA

found that ''the instances when a vehicle must wait, or a portable tank must be held, for the arrival of State inspectors from another location create unnecessary delays.'' 58 FR 48941. In PD–13(R), RSPA found a similar problem with Nassau County's annual inspection requirement for trucks used to transport LPG, because the evidence showed that the County could not conduct the equivalent of a ''roadside or spot'' inspection on vehicles arriving in Nassau County from outside the County. 65 FR at 60244.

These principles apply to the Town's permit requirement in Section 164–108 of the Town Code. It is clear that any State or local periodic inspection requirement has an inherent potential to cause unnecessary delays in the transportation of hazardous materials when that requirement is applied to vehicles based outside of the inspecting jurisdiction. The comments submitted in PD–4(R) and PD–13(R) establish that the ''call and demand'' nature of common carriage makes it (1) impossible to predict in advance which vehicles may be needed for a pick-up or delivery within a particular jurisdiction and (2) impractical to have all vehicles inspected every year or, alternatively, have a few vehicles inspected in order to be ''dedicated'' to the inspecting jurisdiction. *See* the discussion in PD–4(R), 58 FR at 48938–41, and PD–13(R), 65 FR at 60242–44. More specific evidence of the effect of the Town's inspection requirement is not necessary.

The inherent potential for unnecessary delay, when a periodic inspection requirement applies to a vehicle based outside the inspecting jurisdiction, is not eliminated by a ''flexible'' scheduling policy. The impracticability of scheduling an inspection in advance of knowing whether a particular truck will be needed to make a delivery within the inspecting jurisdiction creates unnecessary delay—not the time that the inspection actually takes to be conducted. As discussed in PD–4(R) and PD–13(R), that unnecessary delay would be eliminated if the Town performed the equivalent of a spot or roadside inspection, upon the unannounced arrival of a truck carrying LPG.

Whether or not the inspection performed by the Town lasts longer than that performed by the Nassau County Fire Marshal does not distinguish the requirements of the two jurisdictions. In PD–13(R), RSPA did not focus on the actual time that Nassau County took to conduct an inspection but referred to its earlier determinations that ''the minimal increase in travel time when an inspection is actually being conducted, or the vehicle is waiting its ''turn'' for an inspector to finish inspecting another vehicle that arrived earlier at the same facility is not unnecessary delay.'' 65 FR at 60243 and 63 FR 45286, quoting from IR–4(R), 58 FR at 48941.

RSPA appreciates NPGA's argument that the Town's inspections may duplicate inspections performed by the carrier itself or by Federal or State inspectors. Nonetheless, RSPA cannot find that, by itself, a non-Federal inspection requirement is preempted by Federal hazardous material transportation law when the inspection is performed without causing unnecessary delay in the transportation of hazardous material or otherwise creating an obstacle to accomplishing and carrying out that law and the HMR. (In PD–13(R), RSPA specifically noted that a separate statutory procedure exists for DOT to review and determine whether a State or local inspection requirement is preempted by 49 U.S.C. 31142. 65 FR at 60243.) Under the principles set forth in RSPA's decisions in PD–4(R) and PD–13(R), the potential for duplication is limited to the jurisdiction in which the vehicle is based. Under these circumstances, there is no basis for NPGA's concern that numerous States, counties, and other local jurisdictions may require periodic inspections of the same vehicle. Moreover, the limitation on the number of non-Federal inspections that may be performed should also make it feasible for the owner of a truck based within the Town to schedule an inspection outside of the ''peak propane delivery seasons.''

For all the reasons set forth above and in RSPA's prior determinations in PD–4(R) and PD–13(R), RSPA finds that Federal hazardous material transportation law does not preempt the Town's annual permit requirement in Section 164–108 of the Town Code with respect to trucks that are based within the Town. On the other hand, RSPA finds that the Town's annual permit requirement creates an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous materials on vehicles based outside of the Town and, accordingly, Federal hazardous materials transportation law preempts Section 164–108 of the Town Code with respect to trucks based outside of the Town.

B. Certificate of Fitness Requirement

The Town stated that the relevant provisions of Section 164–109, concerning certificates of fitness, are the following:

A. Certificate of fitness required. Any person filling containers at locations where LPG is sold and/or transferred from one vessel into another shall hold a valid certificate of fitness issued by the Fire Prevention Division. Such certificate is subject to revocation by the Fire Prevention Division at any time where the certificate holder displays evidence of noncompliance with the provisions of this chapter.

E. The certificate of fitness shall be given full force and effect for a period of three years.

I. Certificate of fitness issued. A certificate of fitness will be required of any person performing the following activities:

(1) Filling containers permanently located at consumer sites from a cargo vehicle.

(2) Selling LPG or transferring LPG from one vessel to another.

In its application, the Town stated that two categories of persons must have a certificate of fitness, those who ''handle (fill and sell) LPG at commercial dispensing stations'' and ''operators of vehicles (bulk and rack type carriers) used for domestic delivery of LPG.'' The Town's Chief Fire Marshal explained that a ''Type One'' certificate is required for ''individuals who fill and sell propane tanks at a fixed site,'' and the persons who ''transfer LPG at a fixed site and/or transport and deliver LPG to locations within the Town of Smithtown'' must hold a ''Type Two'' certificate. The Town Code specifies that a certificate of fitness is valid for three years (Section 164–109.E), upon payment of ''the applicable fees'' (Section 164–109.B), which the Chief Fire Marshal states are $150 for the initial issuance and $75 for renewal.

According to the Chief Fire Marshal, both ''a written examination and investigation'' are required to obtain the initial certificate of fitness. He stated that ''testing covers the makeup, uses, and proper handling of the product as outlined within'' the Town's Fire Prevention Code, the New York State Uniform Fire Prevention and Building Code, and standards of the National Fire Prevention Association. He also stated that the ''written exam is a multiple choice exam that lasts approximately 30 minutes. The investigation is a practical test during which the applicant is observed performing the necessary operations.'' The Chief Fire Marshal explained that the written and practical examinations are not required for a renewal or ''when the applicant can produce a valid certificate of fitness from another jurisdiction.''

The Town stated that its certificate of fitness requirement is ''consistent with 49 CFR 172.701 which proscribes only 'minimum training requirements for the transportation of hazardous materials.' '' It stated that its written examination

and investigation are ''in no way duplicative of the training requirements'' in the HMR and address different matters than covered in the HMR: because ''the Town Code deals primarily with the handling of LPG, *i.e.* transporting cylinders and delivering cylinders * * * no conflict exists between the federal code of regulations and the Town Code.''

The Town acknowledged that ''a transporter who delivers LPG must obtain a Type II Certificate of Fitness,'' but stated that ''transporters can anticipate the need to schedule the certification process in advance,'' so there should not be any delay in transportation. It cited the decision in *New Hampshire Motor Transport Ass'n* versus *Flynn*, 751 F.2d 43 (1st Cir. 1984), as upholding a State requirement for hazardous materials and waste transporters to obtain an annual $25 permit or $15 single-trip permit from offices that were not open at night or on weekends.

NPGA stated that RSPA should find that the Town's certificate of fitness requirement is preempted for the same reasons that RSPA found Nassau County's similar requirement to be preempted in PD–13(R). The only difference, as noted by NPGA, is that the Town has two different certificates of fitness, ''one for refillers and one for domestic delivery drivers.'' NPGA also called attention to the decision of a local court that the Town's certificate of fitness requirement is preempted with respect to motor vehicle drivers. *People* versus *Paraco Gas Corp.*, No. SMTO 398–99 (Dist. Ct. Suffolk Co., Mar. 20, 2000).

As discussed in PD–13(R), 63 FR at 45287, the HMR set minimum training requirements for hazmat employees but also contain a specific limitation on additional training that may be required for drivers of motor vehicles transporting hazardous materials. Section 172.701 in the HMR provides that, ''a State may impose more stringent training requirements [on motor vehicle drivers] only if those requirements— (a) Do not conflict with the training requirements in [the HMR]; and (b) Apply only to drivers domiciled in that State.'' As explained in the preamble to RSPA's final rule, this ''language recognizes the traditional regulation by States of their own resident drivers, particularly through drivers' licensing requirements and procedures,'' but it ''does not authorize States to impose [additional training] requirements on non-residents and also does not authorize other governmental agencies to impose requirements.'' 57 FR 20944, 20947 (May 15, 1992), quoted at 63 FR at 45287.

The HMR are consistent with the prohibition against holding a commercial driver's license from more than one State and the requirement that a State must honor a valid commercial driver's license issued by another State that has not been revoked, suspended or canceled. 49 U.S.C. 31311(a)(11), (14), 49 CFR 383.21, 384.214. In this State-administered scheme for licensing drivers of commercial motor vehicles (including those used to deliver propane), there is no room for ''other governmental agencies'' (such as a city or county) to impose additional training requirements, either as part of a licensing procedure or otherwise. Any such additional training requirements are an obstacle to carrying out the Federal hazardous material transportation law and the HMR.

The hazmat employee training requirements in the HMR specifically include testing ''by appropriate means'' in three required areas: general-awareness/familiarization training, function-specific training, and safety training. 49 CFR 172.702(d). Records of training must include a written ''[c]ertification that the hazmat employee has been trained and tested, as required by this subpart.'' 49 CFR 172.704(d). Hazmat training and testing must be conducted ''at least once every three years'' and whenever there is ''a change in job function.'' 49 CFR 172.704(c).

RSPA found that Nassau County's written and practical tests on the use, makeup, and handling of LPG clearly fall within the definition of ''training'' in 49 CFR 172.700(b):

> A systematic program that ensures a hazmat employee has familiarity with the general provisions of this subchapter, is able to recognize and identify hazardous materials, has knowledge of specific requirements of this subchapter applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures, and accident prevention methods and procedures.

See 63 FR at 45287. *Accord*, PD–7(R), Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances, 59 FR 28913, 28919 (June 3, 1994), where RSPA found that Federal hazardous material transportation law preempts Maryland's additional certification requirements for operators of vehicles transporting oil and hazardous wastes, when applied to drivers not domiciled within the State.

When applied to motor vehicle drivers, the Town's certificate fitness requirement conflicts with the limitation against additional training requirements in 49 CFR 172.701 and is an obstacle to accomplishing and carrying out the HMR's training requirements. For that reason, Federal hazardous material transportation law preempts the Town's certificate of fitness requirement in Section 164–109 of the Town Code.

IV. Ruling

Federal hazardous material transportation law preempts:

(1) the requirement in Section 164–108 of the Smithtown Town Code for a permit to deliver liquefied petroleum gas (LPG) within the Town of Smithtown with respect to trucks that are based outside of Smithtown because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside Smithtown.

(2) the requirement in Section 164–109 of the Smithtown Town Code for a certificate of fitness insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 164–109 imposes on drivers of motor vehicles used to deliver LPG more stringent training requirements than provided in the HMR.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision ''in an appropriate district court of the United States . . . not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on March 25, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–7715 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–565 (Sub–No. 7X) and STB Docket No. AB–55 (Sub–No. 605X)]

New York Central Lines, LLC—Abandonment Exemption—in Suffolk County, MA; CSX Transportation, Inc.—Discontinuance of Service Exemption—in Suffolk County, MA

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for NYC to abandon and CSXT to discontinue service over approximately 2.17 miles of railroad between milepost QBG 5.7 and milepost QBG 7.87 in Chelsea, in Suffolk County, MA.[1] The line traverses United States Postal Service Zip Codes 02128 and 02129.

NYC and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on April 30, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 8, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NYC and CSXT have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 5, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NYC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NYC's filing of a notice of consummation by March 29, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.sbt.dot.gov.*

Decided: March 18, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7122 Filed 3–28–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Pursuant to Board authorization in 1998, CSX Corporation, CSXT's parent company, and Norfolk Southern Corporation jointly acquired control of Conrail Inc., and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail have been assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line to be abandoned is included among the property being operated by CSXT pursuant to the NYC operating agreement.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1,100, effective April 8, 2002.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on an information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, FinCEN is soliciting comments concerning FinCEN Form 8300, for use by nonfinancial trades and businesses to report transactions in currency of greater than $10,000.

DATES: Written comments should be received on or before May 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183. *Attention:* PRA Comments—Form 8300. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov* with the caption in the body of the text, ''*Attention:* PRA Comments—Form 8300.''

FOR FURTHER INFORMATION CONTACT: Russell Stephenson, Senior Regulatory Program Analyst, FinCEN, (800) 949–2732, or Laurence Levine, Attorney-Advisor, FinCEN, (703) 905–3590. A copy of the form may be obtained through the Internet at *http://www.IRS.gov.*

SUPPLEMENTARY INFORMATION:

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

OMB Number: 1506–0018.

Form Number: FinCEN Form 8300.

Abstract: The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311, *et seq.*, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311, *et seq.*), appear at 31 CFR part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Bank Secrecy Act was recently amended by section 365 of the USA Patriot Act to add 31 U.S.C. 5331. Under section 5331, any person who is engaged in a trade or business and who, in the course of such trade or business, receives more than $10,000 in coins or currency in one transaction (or two or more related transactions) is required to file a report with respect to such transaction (or related transactions) with the Treasury Department. Reporting under section 5331 does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and its implementing regulations (31 CFR 103.22).

On December 31, 2001, FinCEN issued an Interim Rule (66 FR 67680) and companion Notice of Proposed Rulemaking (66 FR 67685) to implement section 5331. Because section 5331 is substantially similar to 26 U.S.C. 6050I, the Interim Rule provides that persons required to report a transaction under section 5331 must make that report by filing a joint FinCEN/IRS form. The joint form is essentially the same as the Form 8300 previously required to be filed solely under section 6050I of title 26. Under this dual-reporting regime, only one form is required to be filed for a transaction subject to both section 5331 and section 6050I of title 26. Thus, the Interim Rule imposes no new reporting or record-keeping burden on persons required to report transactions under section 5331.

The information collected on FinCEN Form 8300, Report of Cash Payments over $10,000 Received in a Trade or Business, is required to comply with section 5331 and its implementing regulations. The collection of information is mandatory.

Type of Review: New information collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 46,800.

Estimated Total Annual Responses: 140,400.

Estimated Total Annual Burden Hours: FinCEN/IRS Form 8300 imposes no additional burden on the public than that required by its predecessor, IRS Form 8300. For the last estimate of the burden for Form 8300, see 65 FR 3534 (January 21, 2000).

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. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory, law enforcement, and intelligence agencies.

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

Dated: March 22, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–7557 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–02–P

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107–56 (October 26, 2001) (''USA Patriot Act'').

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 21, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2002 to be assured of consideration.

Departmental Offices/Federal Consulting Group

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Customer Satisfaction Measure of Government Web Sites.

Description: The objectives of surveying customers of federal agency web sites are to: (1) Provide information for improving the quality of agency web sites; (2) provide continuous monitoring capabilities; (3) benchmark results against other agencies and private companies; (4) determine how different types of changes to the web site will impact future behaviors; and (5) make the agencies part of a national measure of customer satisfaction with web sites.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 300,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 10,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–7561 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 21, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2002 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0092.
Form Number: None.
Type of Review: Extension.
Title: Libyan Sanctions Regulations.
Description: Submissions will provide the U.S. Government with information to be used in enforcing sanctions against Libya, including prohibitions on travel and financial dealings.
Respondents: Individuals or households, Federal Government.
Estimated Number of Respondents: 5.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5 hours.

OMB Number: 1505–0167.
Form Number: TD F 90–22.52.
Type of Review: Extension.
Title: Cuban Remittance Affidavit.
Description: Submissions will provide the U.S. Government with information to be used in enforcing the prohibitions on the transmission of funds to Cuba by persons subject to U.S. jurisdiction.
Respondents: Individuals or households, business or other for-profit, Federal Government.
Estimated Number of Respondents/Recordkeepers: 1,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 minute.
Frequency of Response: Other (variable).
Estimated Total Reporting/Recordkeeping Burden: 66,667 hours.

OMB Number: 1505–0168.
Form Number: None.
Type of Review: Extension.
Title: Travel Service Provider and Carrier Service Provider Submission.
Description: Submissions will provide the U.S. Government with information to be used in enforcing various economic sanctions programs administered by Office of Foreign Assets Control (OFAC) under 31 CFR Chapter V.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 175.
Estimated Burden Hours Per Respondent/Recordkeeper: 5 minutes.
Frequency of Response: Other (variable).
Estimated Total Reporting/Recordkeeping Burden: 19,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 02–7562 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 19, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2002, to be assured of consideration.

U.S. Mint

OMB Number: 1525–0012.
Form Number: None.
Type of Review: Extension.
Title: Generic Clearance for Voluntary Customer Surveys to Implement E.O. 12862 for the U.S. Mint, Coordinated by Business Alignment for Marketing and Sales and Circulating.
Description: This is a generic clearance for an undefined number of customer satisfaction and opinion surveys or focus group interviews to be conducted over the next three years. The information collected from these surveys will be used to improve Mint products and services.
Respondents: Individuals or households, business or other for-profit.
Estimated Number of Respondents: 10,390.
Estimated Burden Hours Per Response: Varies.
Frequency of Response: Other (varies).
Estimated Total Reporting Burden: 1,553 hours.

Clearance Officer: Mike Green (202) 634–8300, United States Mint, 1730 K. Street, NW, Suite 800, Washington, DC 20212.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 02–7563 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 21, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2002 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1767.
Regulation Project Number: REG–107644–98 Final.
Type of Review: Extension.
Title: Dollar-Value LIFO Regulations; Inventory Price Index Computation Method.
Description: The primary reason for obtaining this information is to ensure compliance by taxpayers electing to use both the LIFO inventory method and the IPIC method of accounting for their

dollar-value inventory pools. Most respondents will be manufacturers, wholesalers, and retailers of tangible personal property.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1545–1769.

Revenue Procedure Number: Revenue Procedure 2002–10.

Type of Review: Extension.

Title: Procedures for IRAs, SEPs and SIMPLEs IRA Plans.

Description: The Economic Growth and Tax Relief Reconciliation Act of 2001 made numerous changes affecting IRAs, SEPs, and SIMPLEs IRA plans. These changes are effective beginning January 1, 2002, and to take advantage of the new law, these retirement plans must be amended and participants notified of the amendments. Revenue Procedure 2002–10 provides guidance on this process and provides an extended period for making the amendments.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms.

Estimated Number of Respondents: 378,000.

Estimated Burden Hours Per Respondent: 20 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 7,371,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–7564 Filed 3–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Cancellation of Customs Broker Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Customs Broker License Cancellations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations (19 CFR Part 111), the following Customs broker licenses are canceled without prejudice. Because previous publication of some records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name, License Number, and Issuing Port

Air-Sea Forwarders, Inc., 03659, San Francisco; Eric T. Buchanan, 14452, Savannah; Burlington Northern Customs Brokerage, 07064, Minneapolis; Carmichael International Service, 05314, San Francisco; James W. Ghedi, 07274, Dallas/Fort Worth; ICE Company, Inc., 06358, Dallas/Fort Worth; Karl Schroff & Associates, 07698, Kansas City; Nations Customs Brokers, Inc., 16320, Miami; Robert J. Schott, 06518, Baltimore.

Some of these entities may continue to provide broker services under a different brokerage license number.

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7536 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Revocation of Customs Broker Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Customs Broker License Revocations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR Part 111), the following Customs broker licenses are revoked. Because previous publication of some records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name	License	Port
Beer, Brian	11541	San Francisco
Brinkley, David H .	09042	Miami
Cohen, George M .	03467	New York
Davila, Jamie	06093	New York
Ramos, Jose A	05284	Dallas/Fort Worth
Unimex Brokerage, Inc .	12585	El Paso

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7533 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Retraction of Revocation or Cancellation Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a list of revoked or cancelled Customs broker licenses.

Name	License	Port Name
Craig International .	13252	Cleveland
Virginia H. Venslovaitis .	11779	Champlain
Robert J. Schott .	05272	Washington

Customs broker licenses numbered 05272, 11779, and 13252 remain valid.

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7534 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Retraction of Revocation Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses.

Tisha Goss, 16852, issued through the Port of Cleveland

This Customs broker license, number 16852, remains valid.

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7535 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Cancellation of License.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.53(g), the following individual Customs broker license has been cancelled due to death of the broker:

Name	License	Port Name
Benjamin J. Hernandez .	09375	Seattle

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7538 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations [19 CFR 111.51(a)], the following Customs broker license is canceled without prejudice.

Name	License	Port
Seino America, Inc .	10930	Los Angeles.

Dated: March 8, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–7537 Filed 3–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 637

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 Form 637, Application for Registration (For Certain Excise Tax Activities).

DATES: Written comments should be received on or before May 28, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Application for Registration For Certain Excise Tax Activities).

OMB Number: 1545–0014.

Form Number: Form 637.

Abstract: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Revenue code section 4101 for purposes of the Federal excise tax on taxable fuel imposed under Code sections 4041 and 4071; and to certain manufacturers or sellers and purchasers that must register under Code section 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Taxable fuel producers are required by Code section 4101 to register with the Service before incurring any tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions, and farms.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 13 hr., 54 min.

Estimated Total Annual Burden Hours: 27,800.

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: March 19, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7651 Filed 3–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0040]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine a lender's and a veteran's request for guaranty of a home loan for home improvements and for the veteran to occupy incomplete property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to ''OMB Control No. 2900–0040'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan, VA Form 26–1847.

OMB Control Number: 2900–0040.

Type of Review: Extension of a currently approved collection.

Abstract: The form serves as the lender's and veteran's request to VA for acceptance of escrow or other arrangement to permit the veteran to occupy a property for which offsite or exterior onsite improvements are incomplete. Escrow funds may only be used to complete the remaining improvements. This procedure makes it possible for loans to be guaranteed with adequate protection for the veteran and VA.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: March 21, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7656 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0362]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the amount owed to the holder when there is a default on a VA guaranteed home loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0362'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: a. Claim Under Loan Guaranty, VA Form 26–1874.

b. Supplemental Claim Form—Adjustable Rate Mortgages, VA Form 26–1874a.

OMB Control Number: 2900–0362.

Type of Review: Extension of a currently approved collection.

Abstract: a. Lenders and holders of VA guaranteed home loans use VA Form 26–1874 as notification to VA of default loans.

b. VA Form 26–1874a is used as an attachment to VA Form 26–1874 when filing a claim under the loan guaranty resulting from the termination of an Adjustable Rate Mortgage Loan. The information obtained on both forms is essential to VA in determining the amount owed to the holder under the guaranty.

Affected Public: Business or other for profit.

Estimated Annual Burden: 26,139 hours.

a. VA Form 26–1874—25,806 hours.

b. VA Form 26–1874a—333 hours.

Estimated Average Burden Per Respondent: 59 minutes (average).

a. VA Form 26–1874—60 minutes.
b. VA Form 26–1874a—20 minutes.
Frequency of Response: On occasion.
Estimated Number of Total Respondents: 26,806.
a. VA Form 26–1874—25,806.
b. VA Form 26–1874a—1,000.

Dated: March 20, 2002.
By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7658 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0324]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revison of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to make a decision on a veteran's claim for insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0324'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplement Physical Examination Reports.

a. Supplemental Physical Examination Report, VA Form 29–8146.
b. Attending Physician's Statement, VA Form 29–8158.
c. Supplemental Physical Examination Report (Diabetes—Physician's Report), VA Form 29–8160.

OMB Control Number: 2900–0324.

Type of Review: Revision of a currently approved collection.

Abstract: The forms are used to obtain complete information as to the physical and/or mental condition of a veteran who has submitted an application for Government Life Insurance or reinstatement of eligibility. The information is used to process the insured's request.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,080 hours.
a. VA Form 29–8146—220 hours.
b. VA Form 29–8158—1,000 hours.
c. VA Form 29–8160—220 hours.

Estimated Average Burden Per Respondent:
a. VA Form 29–8146—45 minutes.
b. VA Form 29–8158—45 minutes.
c. VA Form 29–8160—45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,440.
a. VA Form 29–8146—750.
b. VA Form 29–8158—165.
c. VA Form 29–8160—165.

Dated: March 20, 2002.
By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7659 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health 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 Health Administration (VHA), 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 April 29, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–NEW.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 at (202) 395–7316. Please refer to ''OMB Control No. 2900-NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: VA Multifamily Transitional Housing Loan Guaranty Application, VA Form 10–0365.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA is authorized to guarantee loans for construction or rehabilitation of multifamily transitional housing for homeless veterans. Loans may include amounts to acquire land, refinance existing loans, finance acquisition of furniture, equipment, supplies and materials and to supply working capital for the organization. The information collected is used to determine financial and program service provider eligibility and apply criteria to rate each application; and to obtain information necessary to ensure minimal defaults and delinquencies, interest subsidies, or other payments.

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 January 15, 2002, at page 2015.

Affected Public: Not-for-profit institutions and State, Local or Tribal Governments.

Estimated Annual Burden: 200 hours.

Estimated Average Burden Per Respondent: 40 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5.

Dated: March 20, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7657 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on April 11 and 12, 2002, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Room 230, Washington, DC 20420. On Thursday, April 11, the meeting will begin at 8:15 a.m. and end at 5:30 p.m. On Friday, April 12, the meeting will begin at 8:15 a.m. and adjourn at 4 p.m. The meeting will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War.

The meeting will begin with a discussion of the Committee's goals and work plan, led by the Chairman, Mr. Jim Binns Jr. The Committee will receive briefings on research initiatives affecting Gulf War veterans. Those briefings will focus on epidemiology, risk factors, the nature of the disease, treatments, research policies, and other related topics. The meeting will include opportunities to discuss the material presented in the briefings, and planning for the Committee's first annual report.

Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: March 22, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–7655 Filed 3–28–02; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
March 29, 2002

Part II

Department of Defense

Department of the Army

32 CFR Part 651

Environmental Analysis of Army Actions; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

[Army Regulation 200–2]

Environmental Analysis of Army Actions

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This final rule is a revision of policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) regulations in the Code of Federal Regulations (CFR). These guidelines replace policy and procedures found in current Army Regulation 200–2, Environmental Effects of Army Actions. The revision is necessary to clarify and update the current regulation. Since the December 1988 update of this part, initiatives such as the National Performance Review (NPR) have streamlined the federal government through decentralization, reduction and simplification of regulations, and management of risk. This revised rule strives to meet the spirit of the NPR, and Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations, 11 September 1993.

EFFECTIVE DATE: March 29, 2002.

ADDRESSES: Army Environmental Policy Institute, 101 Marietta Street, Suite 3120, Atlanta, GA 30303–2716.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Webster, Army Environmental Policy Institute at (404) 524–9364 x298.

SUPPLEMENTARY INFORMATION:

a. Background

Proposed revisions to Army Regulation 200–2 (32 CFR part 651) were published in the **Federal Register**, Volume 65, No.174, Part II, pages 54347–54392, September 7, 2000 for public comment.

b. Comments and Responses

Two respondents submitted comments on the proposed rule. The first respondent was concerned that all Environmental Assessments (EAs) might not be made available for public participation and comment, or published in the **Federal Register**. It is Army policy that all EAs of national scope or interest be published in the **Federal Register**, and that all EAs and draft Findings of No Significant Impact (FNSIs) be made available through local publication and public notice. This part provides for such publication of a ''draft FNSI'' for public comment, after which the FNSI is either finalized, the EA is modified, or the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) is published. This same respondent was concerned over the potential effects that Army application of Commercial Activities (OMB Cir. A–76) would have on the ability of Army leaders to ''maintain sufficient capability'' to ensure compliance as required by Section 651.5(e) of the proposed revision. Army application of Commercial Activities includes identification of those employee functions that are ''government in nature'' (GIN), as defined in OMB guidelines. The correct application of those guidelines will satisfy the concerns voiced by the respondent. Similarly, the respondent was concerned over the replacement of career civil servants with military personnel in responsible NEPA oversight and approval positions. This revision clearly places the responsibility for an adequately trained NEPA staff on the Army leadership (§§ 651.4 (a)(2), (c)(1)(v), (e)(1), (f)(4), (g)(8), (o)(12), (r)(1), and (r)(2)), and subsequent oversight of the overall NEPA program performance (§§ 651.4 (a), (f)(6) and (o)(1)). With respect to the respondent's concerns over military (as opposed to civilian) control over NEPA requirements, this revision adds NEPA requirements to the Army Officer Foundation Standards (§ 651.4 (r)(1)).

The second respondent felt that the rule would not insure that impacts to a state's fish and wildlife resources are considered and addressed early in the Army NEPA planning process, and recommended that a REC require documentation of potential impacts to wildlife or wildlife habitat. This issue is addressed in §§ 651.29 (a)(2), (c)(1) and (3), and (e)(1) and (4). The respondent believed that Sections §§ 651.36 (b) and 651.39 of the proposed rule contradict § 651.36 (c) and CEQ Regulation 40 CFR § 1506.6 (a). The cited sections of this proposed rule are not contradictory. Instead, they require open public access and encourage participation, as necessary, to insure that public concerns and issues are incorporated in Army decision making. As an example, § 651.21 of this rule allows for the circulation of a ''draft'' FNSI which is only ''finalized'' after opportunities for pubic involvement have been afforded. Some discretion on the timing and nature of public involvement is afforded, in § 651.36 (b), to the proponents of an action, sufficient participation is required under this rule to insure required public cognizance and the opportunity for more extensive levels of participation, at the discretion of the affected public. The second respondent also expressed concern over the applicability and desirability of CX (c) (1) (in Appendix B), which excludes areas of less than 5 acres of disturbance, if the location of the proposed action is a wetland or habitat area. This CX remains in this final rule, as a proposed action that affects wetlands, sensitive habitat, or other special circumstances, the CX would be prohibited under § 651.29. Noted conflicts on the maximum length of an EIS, between § 651.40 and Appendix E (a) (3), has been resolved in this final rule. Finally this respondent called for a definition of ''Significantly Affecting the Environment'' which is more consistent with CEQ Regulation 40 CFR 1508.27, and this change has been made in this final rule.

c. Administrative Requirements

The Regulatory Flexibility Act

The Regulatory Flexibility Act, 5, U.S.C. 601 *et seq.*, requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organization must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an action, however, need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

The Department of the Army has considered the impact of this part under the Regulatory Flexibility Act. It has been certified that the final rule will not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act

This part does not involve the collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. This organization has determined that this rule has no

federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights

This rule is issued with respect to the National Environmental Policy Act of 1969 and therefore establishes the Army's responsibilities for the early integration of environmental consideration into planning and decision-making. This rule should not impact the provisions of Executive Order 12630 or the Private Property Rights Act.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The revision is not a ''major'' rule within the meaning of Executive Order 12866. The effect on the economy will be less than $100 million. The rule will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies. The rule will not have a significant adverse impact on competition, employment, investment productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12875 Enhancing the Intergovernmental Partnership

The rule does not impose non-statutory unfunded mandates on small governments and is not subject to the requirements of the executive order.

Executive Order 12988, Civil Justice

This rule is in compliance with the provisions and requirements of Executive Order 12988.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The rule is issued with respect to existing environmental guidelines and laws. Therefore, this rule should not directly impact this executive order.

Unfunded Mandates Act

This revision does not impose an enforceable duty upon the private sector nor does it impose unfunded mandates on small governments and therefore is not subject to the requirements of the Unfunded Mandates Reform Act.

National Environmental Policy Act

This part implements the National Environmental Policy Act of 1969 (NEPA), and establishes the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making.

Submission to Congress and the Comptroller General of the General Accounting Office

Pursuant to Section 801(a)(1)(A) of the Administrative Procedures Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army will submit a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedures Act, as amended.

List of Subjects in 32 CFR Part 651

Ecology, Environmental impact statements, Environmental protection, Natural resources.

Dated: December 6, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), DASA (ESOH).

For the reasons as set forth in the preamble, 32 CFR Part 651 is revised to read as follows:

PART 651—ENVIRONMENTAL ANALYSIS OF ARMY ACTIONS (AR 200–2)

Subpart A—Introduction

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651.3 Explanation of abbreviations and terms.
651.4 Responsibilities.
651.5 Army policies.
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651.7 Delegation of authority for non-acquisition systems.
651.8 Disposition of final documents.

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651.12 Determining appropriate level of NEPA analysis.
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Subpart F—Environmental Impact Statement

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651.43 Format of the EIS.
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Subpart H—Environmental Effects of Major Army Action Abroad

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Appendix C to Part 651—Mitigation and Monitoring
Appendix D to Part 651—Public Participation Plan
Appendix E to Part 651—Content of the Environmental Impact Statement
Appendix F to Part 651—Glossary

Authority: 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508; E.O. 12114, 44 FR 1957, 3 CFR, 1979 Comp., p. 356.

Subpart A—Introduction

§ 651.1 Purpose.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA), setting forth the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making.

(b) This part requires environmental analysis of Army actions affecting human health and the environment; providing criteria and guidance on actions normally requiring Environmental Assessments (EAs) or Environmental Impact Statements (EISs), and listing Army actions that are categorically excluded from such requirements, provided specific criteria are met.

(c) This part supplements the regulations of the Council on Environmental Quality (CEQ) in the Code of Federal Regulations (CFR) (40 CFR parts 1500–1508) for Army actions, and must be read in conjunction with them.

(d) All Army acquisition programs must use this part in conjunction with Department of Defense (DOD) 5000.2–R (Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems).

(e) This part applies to actions of the Active Army and Army Reserve, to functions of the Army National Guard (ARNG) involving federal funding, and to functions for which the Army is the DOD executive agent. It does not apply to Civil Works functions of the US Army Corps of Engineers (USACE) or to combat or combat-related activities in a combat or hostile fire zone. Operations Other Than War (OOTW) or Stability and Support Operations (SASO) are subject to the provisions of this part as specified in Subpart H of this part. This part applies to relevant actions within the United States, which is defined as all States; the District of Columbia; territories and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef. This regulation also applies to actions in the Commonwealths of Puerto Rico and the Northern Marianas, the Republic of the Marshall Islands, and the Federated States of Micronesia and Palau (Republic of Belau). In addition, this part addresses the responsibility of the Army for the assessment and consideration of environmental effects for peacetime SASO operations worldwide. Throughout this part, emphasis is placed upon quality analysis of environmental effects, not the production of documents. Documentation is necessary to present and staff results of the analyses, but the objective of NEPA and Army NEPA policy is quality analysis in support of the Army decision maker. The term ''analysis'' also includes any required documentation to support the analysis, coordinate NEPA requirements, and inform the public and the decision maker.

§ 651.2 References.

Required and related publications and referenced forms are listed in Appendix A of this part.

§ 651.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this part are explained in the glossary in Appendix F of this part.

§ 651.4 Responsibilities.

(a) *The Assistant Secretary of the Army (Installations and Environment) (ASA(I&E)).* ASA(I&E) is designated by the Secretary of the Army (SA) as the Army's responsible official for NEPA policy, guidance, and oversight. In meeting these responsibilities, ASA(I&E) will:

(1) Maintain liaison with the Office of the Secretary of Defense (OSD), Office of Management and Budget (OMB), Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), Congressional oversight committees, and other federal, state, and local agencies on Army environmental policies.

(2) Review NEPA training at all levels of the Army, including curricula at Army, DOD, other service, other agency, and private institutions; and ensure adequacy of NEPA training of Army personnel at all levels.

(3) Establish an Army library for EAs and EISs, which will serve as:

(i) A means to ascertain adherence to the policies set forth in this part, as well as potential process improvements; and

(ii) A technical resource for proponents and preparers of NEPA documentation.

(b) The *Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(AL&T)).* ASA(AL&T) will:

(1) Under oversight of the ASA(I&E), execute those NEPA policy provisions contained herein that pertain to the ASA(AL&T) responsibilities in the Army materiel development process, as described in Army Regulation (AR) 70–1, Army Acquisition Policy.

(2) Prepare policy for the Army Acquisition Executive (AAE) to develop and administer a process of review and approval of environmental analyses during the Army materiel development process.

(3) Prepare research, development, test, and evaluation (RDT&E) and procurement budget justifications to support Materiel Developer (MATDEV) implementation of NEPA provisions.

(c) *The Army Acquisition Executive (AEE).* The AAE will, under the Army oversight responsibilities assigned to ASA(I&E):

(1) Administer a process to:

(i) Execute all those NEPA policy provisions contained herein that pertain to all acquisition category (ACAT) programs, projects, and products;

(ii) Ensure that Milestone Decision Authorities (MDAs), at all levels, assess the effectiveness of environmental analysis in all phases of the system acquisition process, including legal review of these requirements;

(iii) Establish resource requirements and program, plan, and budget exhibits for inclusion in annual budget decisions;

(iv) Review and approve NEPA documentation at appropriate times during materiel development, in conjunction with acquisition phases and milestone reviews as established in the Acquisition Strategy; and

(v) Establish NEPA responsibility and awareness training requirements for Army Acquisition Corps personnel.

(2) Ensure Program Executive Officers (PEOs), Deputies for Systems Acquisition (DSAs), and direct-reporting Program Managers (PMs) will:

(i) Supervise assigned programs, projects, and products to ensure that each environmental analysis addresses all applicable environmental laws, executive orders, and regulations.

(ii) Ensure that environmental considerations are integrated into system acquisition plans/strategies, Test and Evaluation Master Plans (TEMPs) and Materiel Fielding Plans, Demilitarization/Disposal Plans, system engineering reviews/Integrated Process Team (IPT) processes, and Overarching Integrated Process Team (OIPT) milestone review processes.

(iii) Coordinate environmental analysis with appropriate organizations to include environmental offices such as Army Acquisition Pollution Prevention Support Office (AAPPSO) and U.S. Army Environmental Center (USAEC) and operational offices and organizations such as testers (developmental/operational), producers, users, and disposal offices.

(3) Ensure Program, Project, Product Managers, and other MATDEVs will:

(i) Initiate the environmental analysis process prescribed herein upon receiving the project office charter to commence the materiel development process, and designate a NEPA point of contact (POC) to the Director of Environmental Programs (DEP).

(ii) Integrate the system's environmental analysis (including NEPA) into the system acquisition strategy, milestone review planning, system engineering, and preliminary design, critical design, and production readiness reviews.

(iii) Apply policies and procedures set forth in this part to programs and actions within their organizational and staff responsibility.

(iv) Coordinate with installation managers and incorporate comments and positions of others (such as the Assistant Chief of Staff for Installation Management (ACSIM) and environmental offices of the development or operational testers, producers, users, and disposers) into the decision-making process.

(v) Initiate the analysis of environmental considerations, assess the environmental consequences of proposed programs and projects, and undergo environmental analysis, as appropriate.

(vi) Maintain the administrative record of the program's environmental analysis in accordance with this part.

(vii) Coordinate with local citizens and other affected parties, and incorporate appropriate comments into NEPA analyses.

(viii) Coordinate with ASA(I&E) when NEPA analyses for actions under AAE purview require publication in the **Federal Register** (FR).

(d) *The Deputy Chief of Staff for Operations and Plans (DCSOPS).* DCSOPS is the proponent for Training and Operations activities. DCSOPS will ensure that Major Army Commands (MACOMs) support and/or perform, as appropriate, NEPA analysis of fielding issues related to specific local or regional concerns when reviewing Materiel Fielding Plans prepared by Combat Developers (CBTDEVs) or MATDEVs. This duty will include the coordination of CBTDEV and MATDEV information with appropriate MACOMs and Deputy Chief of Staff for Logistics (DCSLOG).

(e) *The Assistant Chief of Staff for Installation Management (ACSIM).* ACSIM is responsible for coordinating, monitoring, and evaluating NEPA activities within the Army. The Environmental Programs Directorate is the Army Staff (ARSTAF) POC for environmental matters and serves as the Army staff advocate for the Army NEPA requirements contained in this part. The ACSIM will:

(1) Encourage environmental responsibility and awareness among Army personnel to most effectively implement the spirit of NEPA.

(2) Establish and maintain the capability (personnel and other resources) to comply with the requirements of this part. This responsibility includes the provision of an adequately trained and educated staff to ensure adherence to the policies and procedures specified by this part.

(f) *The Director of Environmental Programs.* The director, with support of the U.S. Army Environmental Center, and under the ACSIM, will:

(1) Advise Army agencies in the preparation of NEPA analyses, upon request.

(2) Review, as requested, NEPA analyses submitted by the Army, other DOD components, and other federal agencies.

(3) Monitor proposed Army policy and program documents that have environmental implications to determine compliance with NEPA requirements and ensure integration of environmental considerations into decision-making and adaptive management processes.

(4) Propose and develop Army NEPA guidance pursuant to policies formulated by ASA(I&E).

(5) Advise project proponents regarding support and defense of Army NEPA requirements through the budgeting process.

(6) Provide NEPA process oversight, in support of ASA(I&E), and, as appropriate, technical review of NEPA documentation.

(7) Oversee proponent implementation and execution of NEPA requirements, and develop and execute programs and initiatives to address problem areas.

(8) Assist the ASA(I&E) in the evaluation of formal requests for the delegation of NEPA responsibilities on a case-by-case basis. This assistance will include:

(i) Determination of technical sufficiency of the description of proposed action and alternatives (DOPAA) when submitted as part of the formal delegation request (§ 651.7).

(ii) Coordination of the action with the MACOM requesting the delegation.

(9) Periodically provide ASA(I&E) with a summary analysis and recommendations on needed improvements in policy and guidance to Army activities concerning NEPA implementation, in support of ASA(I&E) oversight responsibilities.

(10) Advise headquarters proponents on how to secure funding and develop programmatic NEPA analyses to address actions that are Army-wide, where a programmatic approach would be appropriate to address the action.

(11) Designate a NEPA PM to coordinate the Army NEPA program and notify ASA(I&E) of the designation.

(12) Maintain manuals and guidance for NEPA analyses for major Army programs in hard copy and make this guidance available on the World Wide Web (WWW) and other electronic means.

(13) Maintain a record of NEPA POCs in the Army, as provided by the MACOMs and other Army agencies.

(14) Forward electronic copies of all EAs, and EISs to AEC to ensure inclusion in the Army NEPA library; and ensure those same documents are forwarded to the Defense Technical Information Center (DTIC).

(g) *Heads of Headquarters, Army agencies.* The heads of headquarters, Army agencies will:

(1) Apply policies and procedures herein to programs and actions within their staff responsibility except for state-funded operations of the Army National Guard (ARNG).

(2) Task the appropriate component with preparation of NEPA analyses and documentation.

(3) Initiate the preparation of necessary NEPA analyses, assess proposed programs and projects to determine their environmental consequences, and initiate NEPA documentation for circulation and review along with other planning or decision-making documents. These other documents include, as appropriate, completed DD Form 1391 (Military Construction Project Data), Case Study and Justification Folders, Acquisition Strategies, and other documents proposing or supporting proposed programs or projects.

(4) Coordinate appropriate NEPA analyses with ARSTAF agencies.

(5) Designate, record, and report to the DEP the identity of the agency's single POC for NEPA considerations.

(6) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(7) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the DEP.

(8) Maintain the capability (personnel and other resources) to comply with the requirements of this part and include

provisions for NEPA requirements through the Program Planning and Budget Execution System (PPBES) process.

(h) *The Assistant Secretary of the Army for Financial Management (ASA(FM)).* ASA(FM) will establish procedures to ensure that NEPA requirements are supported in annual authorization requests.

(i) *The Judge Advocate General (TJAG).* TJAG will provide legal advice to the Army Staff and assistance in NEPA interpretation, federal implementing regulations, and other applicable legal authority; determine the legal sufficiency for Army NEPA documentation; and interface with the Army General Counsel (GC) and the Department of Justice on NEPA-related litigation.

(j) *The Army General Counsel.* The Army General Counsel will provide legal advice to the Secretary of the Army on all environmental matters, to include interpretation and compliance with NEPA and federal implementing regulations and other applicable legal authority.

(k) *The Surgeon General.* The Surgeon General will provide technical expertise and guidance to NEPA proponents in the Army, as requested, in order to assess public health, industrial hygiene, and other health aspects of proposed programs and projects.

(l) *The Chief, Public Affairs.* The Chief, Public Affairs will:

(1) Provide guidance on issuing public announcements such as Findings of No Significant Impact (FNSIs), Notices of Intent (NOIs), scoping procedures, Notices of Availability (NOAs), and other public involvement activities; and establish Army procedures for issuing/announcing releases in the FR.

(2) Review and coordinate planned announcements on actions of national interest with appropriate ARSTAF elements and the Office of the Assistant Secretary of Defense for Public Affairs (OASD(PA)).

(3) Assist in the issuance of appropriate press releases to coincide with the publication of notices in the FR.

(4) Provide assistance to MACOM and installation Public Affairs Officers (PAOs) regarding the development and release of public involvement materials.

(m) *The Chief of Legislative Liaison.* The Chief of Legislative Liaison will notify Members of Congress of impending proposed actions of national concern or interest. The Chief will:

(1) Provide guidance to proponents at all levels on issuing Congressional notifications on actions of national concern or interest.

(2) Review planned congressional notifications on actions of national concern or interest.

(3) Prior to (and in concert with) the issuance of press releases and publications in the FR, assist in the issuance of congressional notifications on actions of national concern or interest.

(n) *Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander.* Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander will:

(1) Monitor proposed actions and programs within their commands to ensure compliance with this part, including mitigation monitoring, utilizing Environmental Compliance Assessment System (ECAS), Installation Status Report (ISR), or other mechanisms.

(2) Task the proponent of the proposed action with funding and preparation of NEPA documentation and involvement of the public.

(3) Ensure that any proponent at the MACOM level initiates the required environmental analysis early in the planning process, plans the preparation of necessary NEPA documentation, and uses the analysis to aid in the final decision.

(4) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(5) Maintain official record copies of all NEPA documentation for which they are the proponent, and file electronic copies of those EAs, and final EISs with AEC.

(6) Provide coordination with Headquarters, Department of the Army (HQDA) for proposed actions that have either significant impacts requiring an EIS or are of national interest. This process will require defining the purpose and need for the action, alternatives to be considered, and other information, as requested by HQDA. It also must occur early in the process and prior to an irretrievable commitment of resources that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). When delegated signature authority by HQDA, this process also includes the responsibility for complying with this part and associated Army environmental policy.

(7) Approve and forward NEPA documentation, as appropriate, for actions under their purview.

(8) In the case of the Director, ARNG, or his designee, approve all federal NEPA documentation prepared by all ARNG activities.

(9) Ensure environmental information received from MATDEVs is provided to appropriate field sites to support site-specific environmental analysis and NEPA requirements.

(10) Designate a NEPA PM to coordinate the MACOM NEPA program and maintain quality control of NEPA analyses and documentation that are processed through the command.

(11) Budget for resources to maintain oversight of NEPA and this part.

(o) *Installation Commanders; Commanders of U.S. Army Reserve Support Commands; and The Adjutant Generals of the Army National Guard.* Installation Commanders; Commanders of U.S. Army Reserve Support Commands; and The Adjutant Generals of the Army National Guard will:

(1) Establish an installation (command organization) NEPA program and evaluate its performance through the Environmental Quality Control Committee (EQCC) as required by AR 200–1, Environmental Protection and Enhancement.

(2) Designate a NEPA POC to coordinate and manage the installation's (command organization's) NEPA program, integrating it into all activities and programs at the installation. The installation commander will notify the MACOM of the designation.

(3) Establish a process that ensures coordination with the MACOM, other installation staff elements (to include PAOs and tenants) and others to incorporate NEPA requirements early in the planning of projects and activities.

(4) Ensure that actions subject to NEPA are coordinated with appropriate installation organizations responsible for such activities as master planning, natural and cultural resources management, or other installation activities and programs.

(5) Ensure that funding for environmental analysis is prioritized and planned, or otherwise arranged by the proponent, and that preparation of NEPA analyses, including the involvement of the public, is consistent with the requirements of this part.

(6) Approve NEPA analyses for actions under their purview. The Adjutant General will review and endorse documents and forward to the NGB for final approval.

(7) Ensure the proponent initiates the NEPA analysis of environmental consequences and assesses the environmental consequences of proposed programs and projects early in the planning process.

(8) Assist in the review of NEPA analyses affecting the installation or

activity, and those prepared by DOD and other Army or federal agencies, as requested.

(9) Provide information through the chain of command on proposed actions of national interest to higher headquarters prior to initiation of NEPA documentation.

(10) Maintain official record copies of all NEPA documentation for which they are the proponent and forward electronic copies of those final EISs and EAs through the MACOM to AEC.

(11) Ensure that the installation proponents initiate required environmental analyses early in the planning process and plan the preparation of necessary NEPA documentation.

(12) Ensure NEPA awareness and/or training is provided for professional staff, installation-level proponents, and document reviewers (for example, master planning, range control, etc.).

(13) Solicit support from MACOMs, CBTDEVs, and MATDEVs, as appropriate, in preparing site-specific environmental analysis.

(14) Ensure that local citizens are aware of and, where appropriate, involved in NEPA analyses, and that public comments are obtained and considered in decisions regarding proposals.

(15) Use environmental impact analyses to determine the best alternatives from an environmental perspective, and to ensure that these determinations are part of the Army decision process.

(p) *Environmental Officers.* Environmental officers (at the Installation, MACOM, and Army activity level) shall, under the authority of the Installation Commander; Commanders of U.S. Army Reserves Regional Support Commands; and Director NGB–ARE (Installation Commanders):

(1) Represent the Installation, MACOM, or activity Commander on NEPA matters.

(2) Advise the proponent on the selection, preparation, and completion of NEPA analyses and documentation. This approach will include oversight on behalf of the proponent to ensure adequacy and support for the proposed action, including mitigation monitoring.

(3) Develop and publish local guidance and procedures for use by NEPA proponents to ensure that NEPA documentation is procedurally and technically correct. (This includes approval of Records of Environmental Consideration (RECs).)

(4) Identify any additional environmental information needed to support informed Army decision-making.

(5) Budget for resources to maintain oversight with NEPA and this part.

(6) Assist proponents, as necessary, to identify issues, impacts, and possible alternatives and/or mitigations relevant to specific proposed actions.

(7) Assist, as required, in monitoring to ensure that specified mitigation measures in NEPA analyses are accomplished. This monitoring includes assessing the effectiveness of the mitigations.

(8) Ensure completion of agency and community coordination.

(q) *Proponents.* Proponents at all levels will:

(1) Identify the proposed action, the purpose and need, and reasonable alternatives for accomplishing the action.

(2) Fund and prepare NEPA analyses and documentation for their proposed actions. This responsibility will include negotiation for matrix support and services outside the chain of command when additional expertise is needed to prepare, review, or otherwise support the development and approval of NEPA analyses and documentation. These NEPA costs may be borne by successful contract offerors.

(3) Ensure accuracy and adequacy of NEPA analyses, regardless of the author. This work includes incorporation of comments from appropriate servicing Army environmental and legal staffs.

(4) Ensure adequate opportunities for public review and comment on proposed NEPA actions, in accordance with applicable laws and EOs as discussed in § 651.14 (e). This step includes the incorporation of public and agency input into the decision-making process.

(5) Ensure that NEPA analysis is prepared and staffed sufficiently to comply with the intent and requirements of federal laws and Army policy. These documents will provide enough information to ensure that Army decision makers (at all levels) are informed in the performance of their duties (40 CFR 1501.2, 1505.1). This result requires coordination and resolution of important issues developed during the environmental analysis process, especially when the proposed action may involve significant environmental impacts, and includes the incorporation of comments from an affected installation's environmental office in recommendations made to decision makers.

(6) Adequately fund and implement the decision including all mitigation actions and effectiveness monitoring.

(7) Prepare and maintain the official record copy of all NEPA analyses and documentation for which they are the proponent. This step will include the provision of electronic copies of all EAs, final EISs, and Records of Decision (RODs), through their chain of command, to AEC, and forwarding of those same documents to the Defense Technical Information Center (DTIC) as part of their public distribution procedures. In addition, copies of all EAs and FNSIs (in electronic copy) will be provided to ODEP. A copy of the documentation should be maintained for six years after signature of the FNSI/ROD.

(8) Maintain the administrative record for the environmental analysis performed. The administrative record shall be retained by the proponent for a period of six years after completion of the action, unless the action is controversial or of a nature that warrants keeping it longer. The administrative record includes all documents and information used to make the decision. This administrative record should contain, but is not limited to, the following types of records:

(i) Technical information used to develop the description of the proposed action, purpose and need, and the range of alternatives.

(ii) Studies and inventories of affected environmental baselines.

(iii) Correspondence with regulatory agencies.

(iv) Correspondence with, and comments from, private citizens, Native American tribes, Alaskan Natives, local governments, and other individuals and agencies contacted during public involvement.

(v) Maps used in baseline studies.

(vi) Maps and graphics prepared for use in the analysis.

(vii) Affidavits of publications and transcripts of any public participation.

(viii) Other written records that document the preparation of the NEPA analysis.

(ix) An index or table of contents for the administrative record.

(9) Identify other requirements that can be integrated and coordinated within the NEPA process. After doing so, the proponent should establish a strategy for concurrent, not sequential, compliance; sharing similar data, studies, and analyses; and consolidating opportunities for public participation. Examples of relevant statutory and regulatory processes are given in § 651.14 (e).

(10) Identify and coordinate with public agencies, private organizations, and individuals that may have an interest in or jurisdiction over a

resource that might be impacted. Coordination should be accomplished in cooperation with the Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities. Applicable agencies include, but are not limited to:

(i) State Historic Preservation Officer.

(ii) Tribal Historic Preservation Officer.

(iii) U.S. Fish and Wildlife Service.

(iv) Regional offices of the EPA.

(v) State agencies charged with protection of the environment, natural resources, and fish and wildlife.

(vi) USACE Civil Works regulatory functions, including Clean Water Act, Section 404, permitting and wetland protection.

(vii) National Marine Fisheries Service.

(viii) Local agencies and/or governing bodies.

(ix) Environmental interest groups.

(x) Minority, low-income, and disabled populations.

(xi) Tribal governments.

(xii) Existing advisory groups (for example, Restoration Advisory Boards, Citizens Advisory Commissions, etc.).

(11) Identify and coordinate, in concert with environmental offices, proposed actions and supporting environmental analyses with local and/or regional ecosystem management initiatives such as the Mojave Desert Ecosystem Management Initiative or the Chesapeake Bay Initiative.

(12) Review Army policies, including AR 200–1 (Environmental Protection and Enhancement), AR 200–3 (Natural Resources—Land, Forest, and Wildlife Management), and AR 200–4 (Cultural Resources Management) to ensure that the proposed action is coordinated with appropriate resource managers, operators, and planners, and is consistent with existing Army plans and their supporting NEPA analyses.

(13) Identify potential impacts to (and consult with as appropriate) American Indian, Alaskan Native, or Native Hawaiian lands, resources, or cultures (for example, sacred sites, traditional cultural properties, treaty rights, subsistence hunting or fishing rights, or cultural items subject to the Native American Graves Protection and Repatriation Act (NAGPRA)). All consultation shall be conducted on a Government-to-Government basis in accordance with the Presidential Memorandum on Government-to-Government Relations with Tribal Governments (April 29, 1994) (3 CFR, 1994 Comp., p. 1007) and AR 200–4 (Cultural Resources Management). Proponents shall consider, as appropriate, executing Memoranda of Agreements (MOAs) with interested Native American groups and tribes to facilitate timely and effective participation in the NEPA process. These agreements should be accomplished in cooperation with Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities.

(14) Review NEPA documentation that relies upon mitigations that were not accomplished to determine if the NEPA analysis needs to be rewritten or updated. Such an update is required if the unaccomplished mitigation was used to support a FNSI. Additional public notice/involvement must accompany any rewrites.

(r) *The Commander, U.S. Army Training and Doctrine Command (TRADOC).* The Commander, TRADOC will:

(1) Ensure that NEPA requirements are understood and options incorporated in the Officer Foundation Standards (OFS).

(2) Integrate environmental considerations into doctrine, training, leader development, organization, materiel, and soldier (DTLOMS) processes.

(3) Include environmental expert representation on all Integrated Concept Teams (ICTs) involved in requirements determinations.

(4) Ensure that TRADOC CBTDEVs retain and transfer any environmental analysis or related data (such as alternatives analysis) to the MATDEV upon approval of a materiel need. This information and data will serve as the basis for the MATDEV's Acquisition Strategy and subsequent NEPA analyses.

(5) Ensure that environmental considerations are incorporated into the Mission Needs Statements (MNSs) and Operational Requirements Documents (ORDs).

§ 651.5 Army policies.

(a) NEPA establishes broad federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The Army is expected to manage those aspects of the environment affected by Army activities; comprehensively integrating environmental policy objectives into planning and decision-making. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing Army planners and decision makers. The Army will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of Army decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality.

(b) The Army will actively incorporate environmental considerations into informed decision-making, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. Army proponents, participants, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations. While carrying out its mission, the Army will also encourage the wise stewardship of natural and cultural resources for future generations. Decision makers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.

(c) Environmental analyses will reflect appropriate consideration of non-statutory environmental issues identified by federal and DOD orders, directives, and policy guidance. Some examples are in § 651.14 (e). Potential issues will be discussed and critically evaluated during scoping and other public involvement processes.

(d) The Army will continually take steps to ensure that the NEPA program is effective and efficient. Effectiveness of the program will be determined by the degree to which environmental considerations are included on a par with the military mission in project planning and decision-making. Efficiency will be promoted through the following:

(1) Awareness and involvement of the proponent in the NEPA process.

(2) NEPA technical and awareness training, as appropriate, at all decision levels of the Army.

(3) Where appropriate, the use of programmatic analyses and tiering to ensure consideration at the appropriate decision levels, elimination of repetitive discussion, consideration of cumulative effects, and focus on issues that are important and appropriate for discussion at each level.

(4) Use of the scoping and public involvement processes to limit the analysis of issues to those which are of interest to the public and/or important to the decision-making at hand.

(5) Elimination of needless paperwork by focusing documents on the major environmental issues affecting those decisions.

(6) Early integration of the NEPA process into all aspects of Army planning, so as to prevent disruption in the decision-making process; ensuring that NEPA personnel function as team members, supporting the Army planning process and sound Army decision-making. All NEPA analyses will be prepared by an interdisciplinary team.

(7) Partnering or coordinating with agencies, organizations, and individuals whose specialized expertise will improve the NEPA process.

(8) Oversight of the NEPA program to ensure continuous process improvement. NEPA requirements will be integrated into other environmental reporting requirements, such as the ISR.

(9) Clear and concise communication of data, documentation, and information relevant to NEPA analysis and documentation.

(10) Environmental analysis of strategic plans based on:

(i) Scoping thoroughly with agencies, organizations, and the public;

(ii) Setting specific goals for important environmental resources;

(iii) Monitoring of impacts to these resources;

(iv) Reporting of monitoring results to the public; and

(v) Adaptive management of Army operations to stay on course with the strategic plan's specific resource goals.

(11) Responsive staffing through HQDA and the Secretariat. To the extent possible, documents and transmittal packages will be acted upon within 30 calendar days of receipt by each office through which they are staffed. These actions will be approved and transmitted, if the subject material is adequate; or returned with comment in those cases where additional work is required. Cases where these policies are violated should be identified to ASA (I&E) for resolution.

(e) Army leadership and commanders at all levels are required to:

(1) Establish and maintain the capability (personnel and other resources) to ensure adherence to the policies and procedures specified by this part. This should include the use of the PPBES, EPR, and other established resourcing processes. This capability can be provided through the use of a given mechanism or mix of mechanisms (contracts, matrix support, and full-time permanent (FTP) staff), but sufficient FTP staff involvement is required to ensure:

(i) Army cognizance of the analyses and decisions being made; and

(ii) Sufficient institutional knowledge of the NEPA analysis to ensure that Army NEPA responsibilities (pre- and post-decision) are met. Every person preparing, implementing, supervising, and managing projects involving NEPA analysis must be familiar with the requirements of NEPA and the provisions of this part.

(2) Ensure environmental responsibility and awareness among personnel to most effectively implement the spirit of NEPA. All personnel who are engaged in any activity or combination of activities that significantly affect the quality of the human environment will be aware of their NEPA responsibility. Only through alertness, foresight, notification through the chain of command, and training and education will NEPA goals be realized.

(f) The worldwide, transboundary, and long-range character of environmental problems will be recognized, and, where consistent with national security requirements and U.S. foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human and natural environment. Consideration of the environment for Army decisions involving activities outside the United States (see § 651.1(e)) will be accomplished pursuant to Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions, 4 January 1979), host country final governing standards, DOD Directive (DODD) 6050.7 (Environmental Effects Abroad of Major DOD Actions), DOD Instructions (DODIs), and the requirements of this part. An environmental planning and evaluation process will be incorporated into Army actions that may substantially affect the global commons, environments of other nations, or any protected natural or ecological resources of global importance.

(g) Army NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions.

(1) Supplemental NEPA documentation is required when:

(i) The Army makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.

(2) This review requires that the proponent merely initiate another ''hard look'' to ascertain the adequacy of the previous analyses and documentation in light of the conditions listed in paragraph (g)(1) of this section. If this review indicates no need for new or supplemental documentation, a REC can be produced in accordance with this part. Proponents are required to periodically review relevant existing NEPA analyses to ascertain the need for supplemental documentation and document this review in a REC format.

(h) Contractors frequently prepare EISs and EAs. To obtain unbiased analyses, contractors must be selected in a manner avoiding any conflict of interest. Therefore, contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. The contractor's efforts should be closely monitored throughout the contract to ensure an adequate assessment/statement and also avoid extensive, time-consuming, and costly analyses or revisions. Project proponents and NEPA program managers must be continuously informed and involved.

(i) When appropriate, NEPA analyses will reflect review for operations security principles and procedures, described in AR 530–1 (Operations Security (OPSEC)), on the cover sheet or signature page.

(j) Environmental analyses and associated investigations are advanced project planning, and will be funded from sources other than military construction (MILCON) funds. Operations and Maintenance Army (OMA), Operations and Maintenance, Army Reserve (OMAR), and Operations and Maintenance, Army National Guard (OMANG), RDT&E, or other operating funds are the proper sources of funds for such analysis and documentation. Alternative Environmental Compliance Achievement Program (non-ECAP) funds will be identified for NEPA documentation, monitoring, and other required studies as part of the MILCON approval process.

(k) Costs of design and construction mitigation measures required as a direct result of MILCON projects will be paid from MILCON funds, which will be included in the cost estimate and description of work on DD Form 1391, Military Construction Project Data.

(l) Response actions implemented in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation

and Recovery Act (RCRA) are not legally subject to NEPA and do not require separate NEPA analysis. As a matter of Army policy, CERCLA and RCRA analysis and documentation should incorporate the values of NEPA and:

(1) Establish the scope of the analysis through full and open public participation;

(2) Analyze all reasonable alternative remedies, evaluating the significance of impacts resulting from the alternatives examined; and

(3) Consider public comments in the selection of the remedy. The decision maker shall ensure that issues involving substantive environmental impacts are addressed by an interdisciplinary team.

(m) MATDEVs, scientists and technologists, and CBTDEVs are responsible for ensuring that their programs comply with NEPA as directed in this part.

(1) Prior to assignment of a MATDEV to plan, execute, and manage a potential acquisition program, CBTDEVs will retain environmental analyses and data from requirements determination activities, and Science and Technology (S&T) organizations will develop and retain data for their technologies. These data will transition to the MATDEV upon assignment to plan, execute, and manage an acquisition program. These data (collected and produced), as well as the decisions made by the CBTDEVs, will serve as a foundation for the environment, safety, and health (ESH) evaluation of the program and the incorporation of program-specific NEPA requirements into the Acquisition Strategy. Programmatic ESH evaluation is considered during the development of the Acquisition Strategy as required by DOD 5000.2–R for all ACAT programs. Programmatic ESH evaluation is not a NEPA document. It is a planning, programming, and budgeting strategy into which the requirements of this part are integrated. Environmental analysis must be a continuous process throughout the materiel development program. During this continuous process, NEPA analysis and documentation may be required to support decision-making prior to any decision that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). In accordance with DOD 5000.2.R, the MATDEV is responsible for environmental analysis of acquisition life-cycle activities (including disposal). Planning to accomplish these responsibilities will be included in the appropriate section of the Acquisition Strategy.

(2) MATDEVs are responsible for the documentation regarding general environmental effects of all aspects of the system (including operation, fielding, and disposal) and the specific effects for all activities for which he/she is the proponent.

(3) MATDEVs will include, in their Acquisition Strategy, provisions for developing and supplementing their NEPA analyses and documentation, and provide data to support supplemental analyses, as required, throughout the life cycle of the system. The MATDEV will coordinate with ASA (AL&T) or MACOM proponent office, ACSIM, and ASA(I&E), identifying NEPA analyses and documentation needed to support milestone decisions. This requirement will be identified in the Acquisition Strategy and the status will be provided to the ACSIM representative prior to milestone review. The Acquisition Strategy will outline the system-specific plans for NEPA compliance, which will be reviewed and approved by the appropriate MDA and ACSIM. Compliance with this plan will be addressed at Milestone Reviews.

(n) AR 700–142 requires that environmental requirements be met to support materiel fielding. During the development of the Materiel Fielding Plan (MFP), and Materiel Fielding Agreement (MFA), the MATDEV and the materiel receiving command will identify environmental information needed to support fielding decisions. The development of generic system environmental and NEPA analyses for the system under evaluation, including military construction requirements and new equipment training issues, will be the responsibility of the MATDEV. The development of site-specific environmental analyses and NEPA documentation (EAs/EISs), using generic system environmental analyses supplied by the MATDEV, will be the responsibility of the receiving Command.

(o) Army proponents are encouraged to draw upon the special expertise available within the Office of the Surgeon General (OSG) (including the U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM)), and USACE District Environmental Staff to identify and evaluate environmental health impacts, and other agencies, such as USAEC, can be used to assess potential environmental impacts). In addition, other special expertise is available in the Army, DOD, other federal agencies, state and local agencies, tribes, and other organizations and individuals. Their participation and assistance is also encouraged.

§ 651.6 NEPA analysis staffing.

(a) NEPA analyses will be prepared by the proponent using appropriate resources (funds and manpower). The proponent, in coordination with the appropriate NEPA program manager, shall determine what proposal requires NEPA analysis, when to initiate NEPA analysis, and what level of NEPA analysis is initially appropriate. The proponent shall remain intimately involved in determining appropriate milestones, timelines, and inputs required for the successful conduct of the NEPA process, including the use of scoping to define the breadth and depth of analysis required. In cases where the document addresses impacts to an environment whose management is not in the proponents' chain of command (for example, installation management of a range for MATDEV testing or installation management of a fielding location), the proponent shall coordinate the analysis and preparation of the document and identify the resources needed for its preparation and staffing through the command structure of that affected activity.

(b) The approving official is responsible for approving NEPA documentation and ensuring completion of the action, including any mitigation actions needed. The approving official may be an installation commander; or, in the case of combat/materiel development, the MATDEV, MDA, or AAE.

(c) Approving officials may select a lead reviewer for NEPA analysis before approving it. The lead reviewer will determine and assemble the personnel needed for the review process. Funding needed to accomplish the review shall be negotiated with the proponent, if required. Lead reviewer may be an installation EC or a NEPA POC designated by an MDA for a combat/materiel development program.

(d) The most important document is the initial NEPA document (draft EA or draft EIS) being processed. Army reviewers are accountable for ensuring thorough early review of draft NEPA analyses. Any organization that raises new concerns or comments during final staffing will explain why issues were not raised earlier. NEPA analyses requiring public release in the FR will be forwarded to ASA(I&E), through the chain of command, for review. This includes all EISs and all EAs that are of national interest or concern. The activities needed to support public release will be coordinated with ASA(I&E). Public release will not proceed without ASA(I&E) approval.

(e) Public release of NEPA analyses in the FR should be limited to EISs, or EAs

that are environmentally controversial or of national interest or concern. When analyses address actions affecting numerous sites throughout the Continental United States (CONUS), the proponent will carefully evaluate the need for publishing an NOA in the FR, as this requires an extensive review process, as well as supporting documentation alerting EPA and members of Congress of the action. At a minimum, and depending on the proponent's command structure, the following reviews must be accomplished:

(1) The NEPA analysis must be reviewed by the MACOM Legal Counsel or TJAG, ACSIM, ASA(I&E), and Office of General Counsel (OGC).

(2) The supporting documentation must be reviewed by Office of the Chief of Legislative Liaison (OCLL) and Office of the Chief of Public Affairs (OCPA).

(3) Proponents must allow a minimum of 30 days to review the documentation and must allow sufficient time to address comments from these offices prior to publishing the NOA.

(4) The proponent may consider publishing the NOA in local publication resources near each site. Proponents are strongly advised to seek the assistance of the local environmental office and command structure in addressing the need for such notification.

§ 651.7 Delegation of authority for non-acquisition systems.

(a) MACOMs can request delegation authority and responsibility for an EA of national concern or an EIS from ASA(I&E). The proponent, through the appropriate chain of command, and with the concurrence of environmental offices, forwards to HQDA (ODEP) the request to propose, prepare, and finalize an EA and FNSI or EIS through the ROD stage. The request must include, at a minimum, the following:

(1) A description of the purpose and need for the action.

(2) A description of the proposed action and a preliminary list of alternatives to that proposed action, including the ''no action'' alternative. This constitutes the DOPAA.

(3) An explanation of funding requirements, including cost estimates, and how they will be met.

(4) A brief description of potential issues of concern or controversy, including any issues of potential Army-wide impact.

(5) A plan for scoping and public participation.

(6) A timeline, with milestones for the EIS action.

(b) If granted, a formal letter will be provided by ASA(I&E) outlining extent, conditions, and requirements for the NEPA action. Only the ASA(I&E) can delegate this authority and responsibility. When delegated signature authority by HQDA, the MACOM will be responsible for complying with this part and associated Army environmental policy. This delegation, at the discretion of ASA(I&E), can include specific authority and responsibility for coordination and staffing of:

(1) EAs and FNSIs, and associated transmittal packages, as specified in § 651.35(c).

(2) NOIs, Preliminary Draft EISs (PDEISs), Draft EISs (DEISs), Final EISs (FEISs), RODs and all associated transmittal packages as specified in § 651.45. Such delegation will specify requirements for coordination with ODEP and ASA (I&E).

§ 651.8 Disposition of final documents.

All NEPA documentation and supporting administrative records shall be retained by the proponent's office for a minimum of six years after signature of the FNSI/ROD or the completion of the action, whichever is greater. Copies of EAs, and final EISs will be forwarded to AEC for cataloging and retention in the Army NEPA library. The DEIS and FEIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid. The ACSIM shall forward copies of all FEISs to DTIC, the National Archives, and Records Administration.

Subpart B—National Environmental Policy Act and the Decision Process

§ 651.9 Introduction.

(a) The NEPA process is the systematic examination of possible and probable environmental consequences of implementing a proposed action. Integration of the NEPA process with other Army projects and program planning must occur at the earliest possible time to ensure that:

(1) Planning and decision-making reflect Army environmental values, such as compliance with environmental policy, laws, and regulations; and that these values are evident in Army decisions. In addition, Army decisions must reflect consideration of other requirements such as Executive Orders and other non-statutory requirements, examples of which are enumerated in § 651.14(e).

(2) Army and DOD environmental policies and directives are implemented.

(3) Delays and potential conflicts in the process are minimized. The public should be involved as early as possible to avoid potential delays.

(b) All Army decision-making that may impact the human environment will use a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences, planning, and the environmental design arts (section 102(2)(a), Public Law 91–190, 83 Stat. 852, National Environmental Policy Act of 1969 (NEPA)). This approach allows timely identification of environmental effects and values in sufficient detail for concurrent evaluation with economic, technical, and mission-related analyses, early in the decision process.

(c) The proponent of an action or project must identify and describe the range of reasonable alternatives to accomplish the purpose and need for the proposed action or project, taking a ''hard look'' at the magnitude of potential impacts of implementing the reasonable alternatives, and evaluating their significance. To assist in identifying reasonable alternatives, the proponent should consult with the installation environmental office and appropriate federal, tribal, state, and local agencies, and the general public.

§ 651.10 Actions requiring environmental analysis.

The general types of proposed actions requiring environmental impact analysis under NEPA, unless categorically excluded or otherwise included in existing NEPA documentation, include:

(a) Policies, regulations, and procedures (for example, Army and installation regulations).

(b) New management and operational concepts and programs, including logistics; RDT&E; procurement; personnel assignment; real property and facility management (such as master plans); and environmental programs such as Integrated Natural Resource Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP), and Integrated Pest Management Plan. NEPA requirements may be incorporated into other Army plans in accordance with 40 CFR 1506.4.

(c) Projects involving facilities construction.

(d) Operations and activities including individual and unit training, flight operations, overall operation of installations, or facility test and evaluation programs.

(e) Actions that require licenses for operations or special material use, including a Nuclear Regulatory Commission (NRC) license, an Army radiation authorization, or Federal Aviation Administration air space

request (new, renewal, or amendment), in accordance with AR 95–50.

(f) Materiel development, operation and support, disposal, and/or modification as required by DOD 5000.2–R.

(g) Transfer of significant equipment or property to the ARNG or Army Reserve.

(h) Research and development including areas such as genetic engineering, laser testing, and electromagnetic pulse generation.

(i) Leases, easements, permits, licenses, or other entitlement for use, to include donation, exchange, barter, or Memorandum of Understanding (MOU). Examples include grazing leases, grants of easement for highway right-of-way, and requests by the public to use land for special events such as air shows or carnivals.

(j) Federal contracts, grants, subsidies, loans, or other forms of funding such as Government-Owned, Contractor-Operated (GOCO) industrial plants or housing and construction via third-party contracting.

(k) Request for approval to use or store materials, radiation sources, hazardous and toxic material, or wastes on Army land. If the requester is non-Army, the responsibility to prepare proper environmental documentation may rest with the non-Army requester, who will provide needed information for Army review. The Army must review and adopt all NEPA documentation before approving such requests.

(l) Projects involving chemical weapons/munitions.

§ 651.11 Environmental review categories.

The following are the five broad categories into which a proposed action may fall for environmental review:

(a) *Exemption by law.* The law must apply to DOD and/or the Army and must prohibit, exempt, or make impossible full compliance with the procedures of NEPA (40 CFR 1506.11). While some aspects of Army decision-making may be exempted from NEPA, other aspects of an action are still subject to NEPA analysis and documentation. The fact that Congress has directed the Army to take an action does not constitute an exemption.

(b) *Emergencies.* In the event of an emergency, the Army will, as necessary, take immediate actions that have environmental impacts, such as those to promote national defense or security or to protect life or property, without the specific documentation and procedural requirements of other sections of this part. In such cases, at the earliest practicable time, the HQDA proponent will notify the ODEP, which in turn will notify the ASA(I&E). ASA(I&E) will coordinate with the Deputy Under Secretary of Defense for Installations and Environment (DUSD(IE)) and the CEQ regarding the emergency and subsequent NEPA compliance after the emergency action has been completed. These notifications apply only to actions necessary to control the immediate effects of the emergency. Other actions remain subject to NEPA review (40 CFR 1506.11). A public affairs plan should be developed to ensure open communication among the media, the public, and the installation. The Army will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this part or the CEQ regulations. However, the Army's on-site commander dealing with the emergency will consider the probable environmental consequences of proposed actions, and will minimize environmental damage to the maximum degree practicable, consistent with protecting human life, property, and national security. State call-ups of ARNG during a natural disaster or other state emergency are excluded from this notification requirement. After action reports may be required at the discretion of the ASA(I&E).

(c) *Categorical Exclusions (CXs).* These are categories of actions that normally do not require an EA or an EIS. The Army has determined that they do not individually or cumulatively have a substantial effect on the human environment. Qualification for a CX is further described in Subpart D and Appendix B of this part. In accordance with § 651.29, actions that degrade the existing environment or are environmentally controversial or adversely affect environmentally sensitive resources will require an EA.

(d) *Environmental Assessment.* Proposed Army actions not covered in the first three categories (paragraphs (a) through (c) of this section) must be analyzed to determine if they could cause significant impacts to the human or natural environment (see § 651.39). The EA determines whether possible impacts are significant, thereby warranting an EIS. This requires a ''hard look'' at the magnitude of potential impacts, evaluation of their significance, and documentation in the form of either an NOI to prepare an EIS or a FNSI. The format (§ 651.34) and requirements for this analysis are addressed in Subpart E of this part (see § 651.33 for actions normally requiring an EA). The EA is a valuable planning tool to discuss and document environmental impacts, alternatives, and controversial actions, providing public and agency participation, and identifying mitigation measures.

(e) *EIS.* When an action clearly has significant impacts or when an EA cannot be concluded by a FNSI, an EIS must be prepared. An EIS is initiated by the NOI (§ 651.22), and will examine the significant environmental effects of the proposed action as well as accompanying measures to mitigate those impacts. This process requires formal interaction with the public, a formal ''scoping'' process, and specified timelines for public review of the documentation and the incorporation of public comments. The format and requirements for the EIS are addressed in Subpart F of this part (see § 651.42 for actions normally requiring an EIS).

§ 651.12 Determining appropriate level of NEPA analysis.

(a) The flow chart shown in Figure 1 summarizes the process for determining documentation requirements, as follows:

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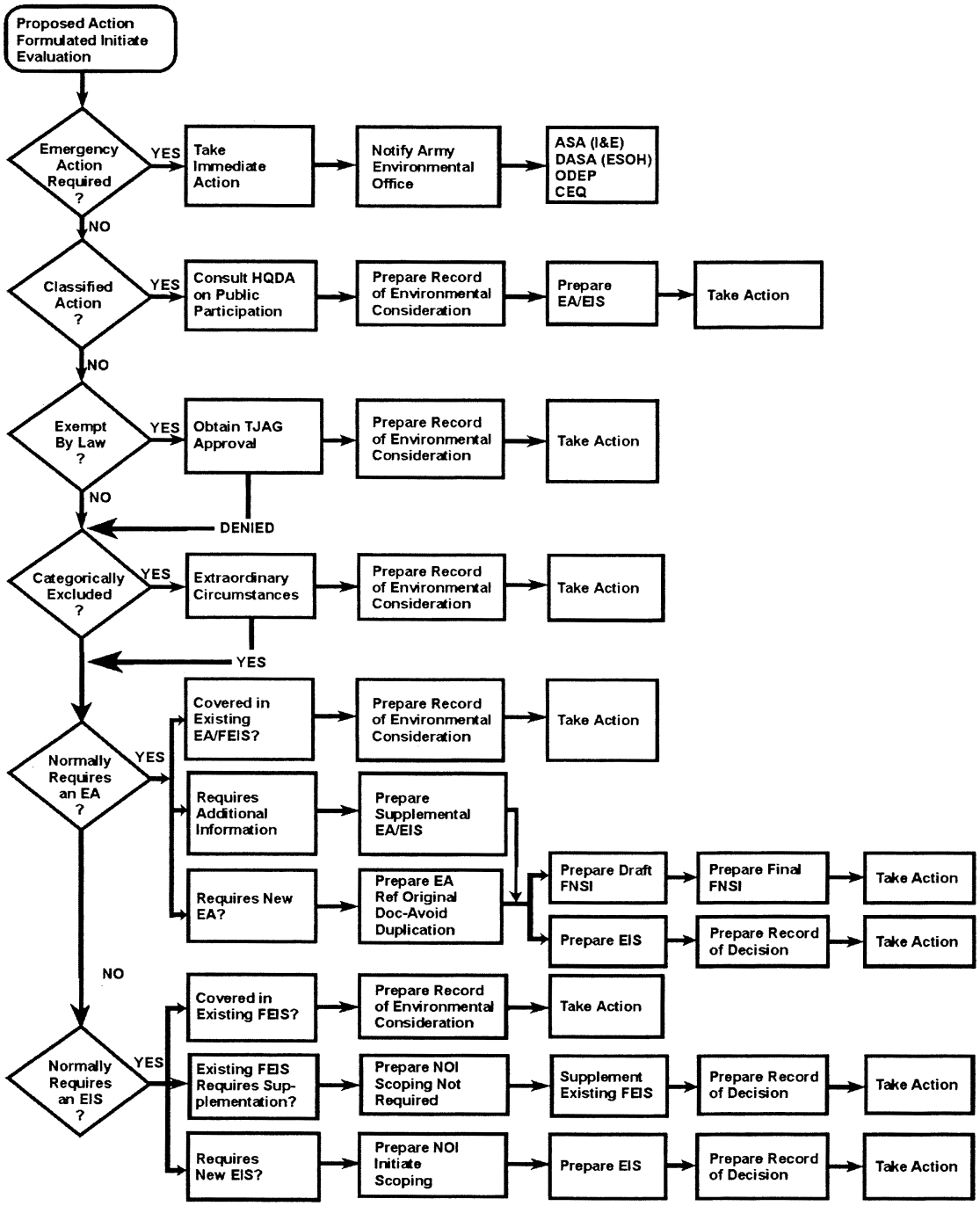

Figure 1. Flow chart summarizing process for determination of document requirements.

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(1) If the proposed action qualifies as a CX (Subpart D of this part), and the screening criteria are met (§ 651.29), the action can proceed. Some CXs require a REC.

(2) If the proposed action is adequately covered within an existing EA or EIS, a REC is prepared to that effect. The REC should state the applicable EA or EIS title and date, and identify where it may be reviewed (§ 651.19, Figure 3). The REC is then attached to the proponent's record copy of that EA or EIS.

(3) If the proposed action is within the general scope of an existing EA or EIS, but requires additional information, a supplement is prepared, considering the new, modified, or missing information. Existing documents are incorporated by reference and conclusions are published as either a FNSI or NOI to supplement the EIS.

(4) If the proposed action is not covered adequately in any existing EA or EIS, or is of a significantly larger scope than that described in the existing document, an EA is prepared, followed by either a FNSI or NOI to prepare an EIS. Initiation of an EIS may proceed without first preparing an EA, if deemed appropriate by the proponent.

(5) If the proposed action is not within the scope of any existing EA or EIS, then the proponent must begin the preparation of a new EA or EIS, as appropriate.

(b) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will document their use in a REC FNSI, or ROD.

§ 651.13 Classified actions.

(a) For proposed actions and NEPA analyses involving classified information, AR 380–5 (Department of the Army Information Security Program) will be followed.

(b) Classification does not relieve a proponent of the requirement to assess and document the environmental effects of a proposed action.

(c) When classified information can be reasonably separated from other information and a meaningful environmental analysis produced, unclassified documents will be prepared and processed in accordance with this part. Classified portions will be kept separate and provided to reviewers and decision makers in accordance with AR 380–5.

(d) When classified information is such an integral part of the analysis of a proposal that a meaningful unclassified NEPA analysis cannot be produced, the proponent, in consultation with the appropriate security and environmental offices, will form a team to review classified NEPA analysis. This interdisciplinary team will include environmental professionals to ensure that the consideration of environmental effects will be consistent with the letter and intent of NEPA, including public participation requirements for those aspects which are not classified.

§ 651.14 Integration with Army planning.

(a) *Early integration.* The Army goal is to concurrently integrate environmental reviews with other Army planning and decision-making actions, thereby avoiding delays in mission accomplishment. To achieve this goal, proponents shall complete NEPA analysis as part of any recommendation or report to decision makers prior to the decision (subject to 40 CFR 1506.1). Early planning (inclusion in Installation Master Plans, INRMPs, ICRMPs, Acquisition Strategies, strategic plans, etc.) will allow efficient program or project execution later in the process.

(1) The planning process will identify issues that are likely to have an effect on the environment, or to be controversial. In most cases, local citizens and/or existing advisory groups should assist in identifying potentially controversial issues during the planning process. The planning process also identifies minor issues that have little or no measurable environmental effect, and it is sound NEPA practice to reduce or eliminate discussion of minor issues to help focus analyses. Such an approach will minimize unnecessary analysis and discussion in the NEPA process and documents.

(2) Decision makers will be informed of and consider the environmental consequences at the same time as other factors such as mission requirements, schedule, and cost. If permits or coordination are required (for example, Section 404 of the Clean Water Act, Endangered Species Act consultation, Section 106 of the National Historic Preservation Act (NHPA), etc.), they should be initiated no later than the scoping phase of the process and should run parallel to the NEPA process, not sequential to it. This practice is in accordance with the recommendations presented in the CEQ publication entitled ''The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years.''

(3) NEPA documentation will accompany the proposal through the Army review and decision-making processes. These documents will be forwarded to the planners, designers, and/or implementers, ensuring that the recommendations and mitigations upon which the decision was based are being carried out. The implementation process will provide necessary feedback for adaptive environmental management; responding to inaccuracies or uncertainties in the Army's ability to accurately predict impacts, changing field conditions, or unexpected results from monitoring. The integration of NEPA into the ongoing planning activities of the Army can produce considerable savings to the Army.[1]

(b) *Time limits.* The timing of the preparation, circulation, submission, and public availability of NEPA documentation is important to ensure that environmental values are integrated into Army planning and decisions.

(1) *Categorical exclusions.* When a proposed action is categorically excluded from further environmental review (Subpart D and Appendix B of this part), the proponent may proceed immediately with that action upon receipt of all necessary approvals, (including local environmental office confirmation that the CX applies to the proposal) and the preparation of a REC, if required.

(2) *Findings of no significant impact.* (i) A proponent will make an EA and draft FNSI available to the public for review and comment for a minimum of 30 days prior to making a final decision and proceeding with an action. If the proposed action is one of national concern, is unprecedented, or normally requires an EIS (§ 651.42), the FNSI must be published in the FR. Otherwise, the FNSI must be published in local newspapers and be made widely available. The FNSI must articulate the deadline for receipt of comments, availability of the EA for review, and steps required to obtain the EA. This can include a POC, address, and phone number; a location; a reference to a website; or some equivalent mechanism. (In no cases will the only coordination mechanism be a website.) At the conclusion of the appropriate comment

[1] For example, a well-executed EA or EIS on an Installation Master Plan can eliminate the need for many case-by-case analyses and documentation for construction projects. After the approval of an adequate comprehensive plan (which adequately addresses the potential for environmental effects), subsequent projects can tier off of the Master Plan NEPA analysis (AR 210–20). Other integration of the NEPA process and broad-level planning can lead to the ''tiering'' of NEPA, allowing the proponent to minimize the effort spent on individual projects, and ''incorporating by reference'' the broader level environmental considerations. This tiering allows the development of program level (programmatic) EAs and EISs, which can introduce greater economies of scale. These assessments are addressed in more detail in paragraph (c) of this section.

period, as specified in Figure 2, the decision maker may sign the FNSI and take immediate action, unless sufficient public comments are received to warrant more time for their resolution. Figure 2 follows:

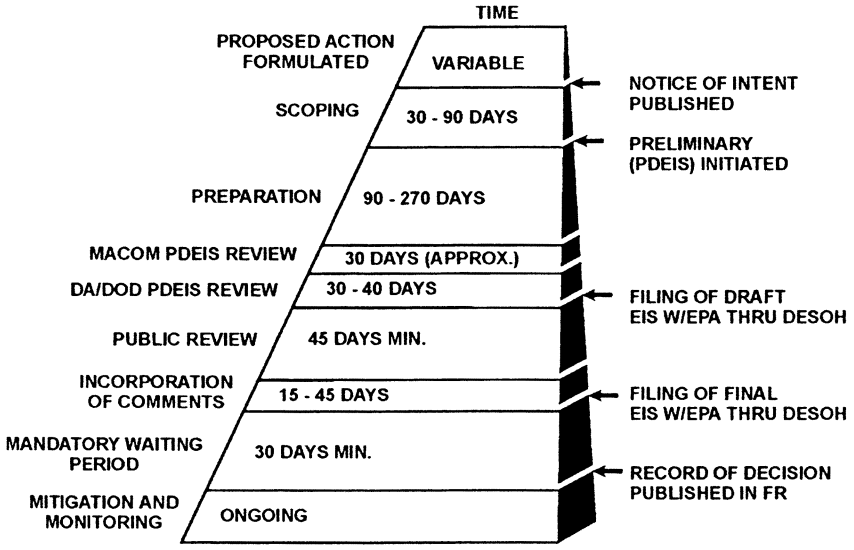

Figure 2. Time involved for preparing and processing an environmental impact statement.

(ii) A news release is required to publicize the availability of the EA and draft FNSI, and a simultaneous announcement that includes publication in the FR must be made by HQDA, if warranted (see § 651.35 (e)). The 30-day waiting period begins at the time that the draft FNSI is publicized (40 CFR 1506.6(b)).

(iii) In cases where the 30-day comment period jeopardizes the project and the full comment period would provide no public benefit, the period may be shortened with appropriate approval by a higher decision authority (such as a MACOM). In no circumstances should the public comment period for an EA/draft FNSI be less than 15 days. A deadline and POC for receipt of comments must be included in the draft FNSI and the news release.

(3) *EIS.* The EPA publishes a weekly notice in the FR of the EISs filed during the preceding week. This notice usually occurs each Friday. An NOA reaching EPA on a Friday will be published in the following Friday issue of the FR. Failure to deliver an NOA to EPA by close of business on Friday will result in an additional one-week delay. A news release publicizing the action will be made in conjunction with the notice in the FR. The following time periods, calculated from the publication date of the EPA notice, will be observed:

(i) Not less than 45 days for public comment on DEISs (40 CFR 1506.10(c)).

(ii) Not less than 15 days for public availability of DEISs prior to any public hearing on the DEIS (40 CFR 1506(c)(2)).

(iii) Not less than 90 days from filing the DEIS prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10(b) and (c)).

(iv) The time periods prescribed here may be extended or reduced in accordance with 40 CFR 1506.10(b)(2) and (d).

(v) When variations to these time limits are set, the Army agency should consider the factors in 40 CFR 1501.8(b)(1).

(vi) The proponent may also set time limits for other procedures or decisions related to DEISs and FEISs as listed in 40 CFR 1501.8(b)(2).

(vii) Because the entire EIS process could require more than one year (Figure 2 in paragraph (b)(2)(i) of this section), the process must begin as soon as the project is sufficiently mature to allow analysis of alternatives and the proponent must coordinate with all staff elements with a role to play in the NEPA process. DEIS preparation and response to comments constitute the largest portion of time to prepare an FEIS.

(viii) A public affairs plan should be developed that provides for periodic interaction with the community. There is a minimum public review time of 90 days between the publication of the DEIS and the announcement of the ROD. After the availability of the ROD is announced, the action may proceed. This announcement must be made through the FR for those EISs for which HQDA signs the ROD. For other EISs, announcements in the local press are adequate. Figure 2 in paragraph (b)(2)(i) of this section indicates typical and required time periods for EISs.

(c) *Programmatic environmental review (tiering).* (1) Army agencies are encouraged to analyze actions at a programmatic level for those programs that are similar in nature or broad in scope (40 CFR 1502.4(c), 1502.20, and 1508.23). This level of analysis will eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad programmatic EA or EIS has been prepared, any subsequent EIS or EA on an action included within the entire program or policy (particularly a site-specific action) need only summarize issues discussed in the broader statement and concentrate on the issues specific to the subsequent action.[2] This subsequent

[2] As an example, an appropriate way to address diverse weapon system deployments would be to produce site-specific EAs or EISs for each major deployment installation, using the generic environmental effects of the weapon system

Continued

document will state where the earlier document is available.

(2) Army proponents are normally required to prepare many types of management plans that must include or be accompanied by appropriate NEPA analysis. NEPA analysis for these types of plans can often be accomplished with a programmatic approach, creating an analysis that covers a number of smaller projects or activities. In cases where such activities are adequately assessed as part of these normal planning activities, a REC can be prepared for smaller actions that cite the document in which the activities were previously assessed. Care must be taken to ensure that site-specific or case-specific conditions are adequately addressed in the existing programmatic document before a REC can be used, and the REC must reflect this consideration. If additional analyses are required, they can ''tier'' off the original analyses, eliminating duplication. Tiering, in this manner, is often applicable to Army actions that are long-term, multi-faceted, or multi-site.

(d) *Scoping.* (1) When the planning for an Army project or action indicates a need for an EIS, the proponent initiates the scoping process (see Subpart G of this part for procedures and actions). This process determines the scope of issues to address in the EIS and identifies the significant issues related to the proposed action. During the scoping, process participants identify the range of actions, alternatives, and impacts to consider in the EIS (40 CFR 1508.25). For an individual action, the scope may depend on the relationship of the proposed action to other NEPA documents. The scoping phase of the NEPA process, as part of project planning, will identify aspects of the proposal that are likely to have an effect or be controversial; and will ensure that the NEPA analyses are useful for a decision maker. For example, the early identification and initiation of permit or coordination actions can facilitate problem resolution, and, similarly, cumulative effects can be addressed early in the process and at the appropriate spatial and temporal scales.

(2) The extent of the scoping process, including public involvement, will depend on several factors. These factors include:

(i) The size and type of the proposed action.

(ii) Whether the proposed action is of regional or national interest.

(iii) Degree of any associated environmental controversy.

(iv) Size of the affected environmental parameters.

(v) Significance of any effects on them.

(vi) Extent of prior environmental review.

(vii) Involvement of any substantive time limits.

(viii) Requirements by other laws for environmental review.

(ix) Cumulative impacts.

(3) Through scoping, many future controversies can be eliminated, and public involvement can be used to narrow the scope of the study, concentrating on those aspects of the analysis that are truly important.

(4) The proponent may incorporate scoping as part of the EA process, as well. If the proponent chooses a public involvement strategy, the extent of scoping incorporated is at the proponent's discretion.

(e) *Analyses and documentation.* Several statutes, regulations, and Executive Orders require analyses, consultation, documentation, and coordination, which duplicate various elements and/or analyses required by NEPA and the CEQ regulations; often leading to confusion, duplication of effort, omission, and, ultimately, unnecessary cost and delay. Therefore, Army proponents are encouraged to identify, early in the NEPA process, opportunities for integrating those requirements into proposed Army programs, policies, and projects. Environmental analyses required by this part will be integrated as much as practicable with other environmental reviews, laws, and Executive Orders (40 CFR 1502.25). Incorporation of these processes must ensure that the individual requirements are met, in addition to those required by NEPA. The NEPA process does not replace the procedural or substantive requirements of other environmental statutes and regulations. Rather, it addresses them in one place so the decision maker has a concise and comprehensive view of the major environmental issues and understands the interrelationships and potential conflicts among the environmental components. NEPA is the ''umbrella'' that facilitates such coordination by integrating processes that might otherwise proceed independently. Prime candidates for such integration include, but are not limited to, the following:

(1) Clean Air Act, as amended (General Conformity Rule, 40 CFR parts 51 and 93).

(2) Endangered Species Act.

(3) NHPA, sections 106 and 110.

(4) NAGPRA (Public Law 101–601, 104 Stat. 3048).

(5) Clean Water Act, including Section 404(b)(1).

(6) American Indian Religious Freedom Act.

(7) Fish and Wildlife Coordination Act.

(8) Comprehensive Environmental Response, Compensation, and Liability Act.

(9) Resource Conservation and Recovery Act.

(10) Pollution Prevention Act.

(11) The Sikes Act, Public Law 86–797, 74 Stat. 1052.

(12) Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements (Executive Order 12856, 3 CFR, 1993 Comp., p. 616).

(13) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898, 3 CFR, 1994 Comp., p. 859).

(14) Indian Sacred Sites (Executive Order 13007, 3 CFR, 1996 Comp., p. 196).

(15) Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045, 3 CFR, 1997 Comp., p. 198).

(16) Federal Support of Community Efforts Along American Heritage Rivers (Executive Order 13061, 3 CFR, 1997 Comp., p. 221).

(17) Floodplain Management (Executive Order 11988, 3 CFR, 1977 Comp., p. 117).

(18) Protection of Wetlands (Executive Order 11990, 3 CFR, 1977 Comp., p. 121).

(19) Environmental Effects Abroad of Major Federal Actions (Executive Order 12114, 3 CFR, 1979 Comp., p. 356).

(20) Invasive Species (Executive Order 13112, 3 CFR, 1999 Comp., p. 159).

(21) AR 200–3, Natural Resources—Land, Forest, and Wildlife Management.

(22) Environmental analysis and documentation required by various state laws.

(23) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(24) Any permitting and licensing procedures required by federal and state law.

(25) Any installation and Army master planning functions and plans.

(26) Any installation management plans, particularly those that deal directly with the environment.

(27) Any stationing and installation planning, force development planning, and materiel acquisition planning.

(28) Environmental Noise Management Program.

(29) Hazardous waste management plans.

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identified in a programmatic EA or EIS prepared by the MATDEV.

(30) Integrated Cultural Resource Management Plan as required by AR 200–4 and DODD 4700.4, Natural Resources Management Program.

(31) Asbestos Management Plans.

(32) Integrated Natural Resource Management Plans, AR 200–3, Natural Resources—Land, Forest, and Wildlife Management, and DODD 4700.4, Natural Resources Management Program.

(33) Environmental Baseline Surveys.

(34) Programmatic Environment, Safety, and Health Evaluation (PESHE) as required by DOD 5000.2-R and DA Pamphlet 70–3, Army Acquisition Procedures, supporting AR 70–1, Acquisition Policy.

(35) The DOD MOU to Foster the Ecosystem Approach signed by CEQ, and DOD, on 15 December 1995; establishing the importance of ''non-listed,'' ''non-game,'' and ''non-protected'' species.

(36) Other requirements (such as health risk assessments), when efficiencies in the overall Army environmental program will result.

(f) *Integration into Army acquisition.* The Army acquisition community will integrate environmental analyses into decision-making, as required in this part ensuring that environmental considerations become an integral part of total program planning and budgeting, PEOs, and Program, Product, and Project Managers integrate the NEPA process early, and acquisition planning and decisions reflect national and Army environmental values and considerations. By integrating pollution prevention and other aspects of any environmental analysis early into the materiel acquisition process, the PEO and PM facilitate the identification of environmental cost drivers at a time when they can be most effectively controlled. NEPA program coordinators should refer to DA Pamphlet 70–3, Army Acquisition Procedures, and the Defense Acquisition Deskbook (DAD) for current specific implementation guidance, procedures, and POCs.

(g) *Relations with local, state, regional, and tribal agencies.* (1) Army installation, agency, or activity environmental officers or planners should establish a continuing relationship with other agencies, including the staffs of adjacent local, state, regional, and tribal governments and agencies. This relationship will promote cooperation and resolution of mutual land use and environment-related problems, and promote the concept of regional ecosystem management as well as general cooperative problem solving. Many of these ''partners'' will have specialized expertise and access to environmental baseline data, which will assist the Army in day-to-day planning as well as NEPA-related issues. MOUs are encouraged to identify areas of mutual interest, establish POCs, identify lines of communication between agencies, and specify procedures to follow in conflict resolution. Additional coordination is available from state and area-wide planning and development agencies. Through this process, the proponent may gain insights on other agencies' approaches to EAs, surveys, and studies applicable to the current proposal. These other agencies would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

(2) In some cases, local, state, regional, or tribal governments or agencies will have sufficient jurisdiction by law or special expertise with respect to reasonable alternatives or significant environmental, social, or economic impacts associated with a proposed action. When appropriate, proponents of an action should determine whether these entities have an interest in becoming a cooperating agency (§ 651.45 (b) and 40 CFR 1501.6). If cooperating agency status is established, a memorandum of agreement is required to document specific expectations, roles, and responsibilities, including analyses to be performed, time schedules, availability of pre-decisional information, and other issues. Cooperating agencies may use their own funds, and the designation of cooperating agency status neither enlarges nor diminishes the decision-making status of any federal or non-federal entities (see CEQ Memorandum for Heads of Federal Agencies entitled ''Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act'' dated 28 July 1999, available from the President's Council on Environmental Quality (CEQ), Executive Office of the President of the U.S.). In determining sufficient jurisdiction or expertise, CEQ regulations can be used as guidance.

(h) *The Army as a cooperating agency.* Often, other agencies take actions that can negatively impact the Army mission. In such cases, the Army may have some special or unique expertise or jurisdiction.

(1) The Army may be a cooperating agency (40 CFR 1501.6) in order to:

(i) Provide information or technical expertise to a lead agency.

(ii) Approve portions of a proposed action.

(iii) Ensure the Army has an opportunity to be involved in an action of another federal agency that will affect the Army.

(iv) Provide review and approval of the portions of EISs and RODs that affect the Army.

(2) Adequacy of an EIS is primarily the responsibility of the lead agency. However, as a cooperating agency with approval authority over portions of a proposal, the Army may adopt an EIS if review concludes the EIS adequately satisfies the Army's comments and suggestions.

(3) If the Army is a major approval authority for the proposed action, the appropriate Army official may sign the ROD prepared by the lead agency, or prepare a separate, more focused ROD. If the Army's approval authority is only a minor aspect of the overall proposal, such as issuing a temporary use permit, the Army need not sign the lead agency's ROD or prepare a separate ROD.

(4) The magnitude of the Army's involvement in the proposal will determine the appropriate level and scope of Army review of NEPA documents. If the Army is a major approval authority or may be severely impacted by the proposal or an alternative, the Army should undertake the same level of review as if it were the lead agency. If the involvement is limited, the review may be substantially less. The lead agency is responsible for overall supervision of the EIS, and the Army will attempt to meet all reasonable time frames imposed by the lead agency.

(5) If an installation (or other Army organization) should become aware of an EIS being prepared by another federal agency in which they may be involved within the discussion of the document, they should notify ASA(I&E) through the chain of command. ASA(I&E) will advise regarding appropriate Army participation as a cooperating agency, which may simply involve local coordination.

§ 651.15 Mitigation and monitoring.

(a) Throughout the environmental analysis process, the proponent will consider mitigation measures to avoid or minimize environmental harm. Mitigation measures include:

(1) Avoiding the impact altogether, by eliminating the action or parts of the action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact; by repairing, rehabilitating, or restoring the adverse effect on the environment.

(4) Reducing or eliminating the impact over time, by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact, by replacing or providing substitute resources or environments. (Examples and further clarification are presented in Appendix C of this part.)

(b) When the analysis proceeds to an EA or EIS, mitigation measures will be clearly assessed and those selected for implementation will be identified in the FNSI or the ROD. The proponent must implement those identified mitigations, because they are commitments made as part of the Army decision. The proponent is responsible for responding to inquiries from the public or other agencies regarding the status of mitigation measures adopted in the NEPA process. The mitigation shall become a line item in the proponent's budget or other funding document, if appropriate, or included in the legal document implementing the action (for example, contracts, leases, or grants). Only those practical mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified. Any mitigation measures selected by the proponent will be clearly outlined in the NEPA decision document, will be budgeted and funded (or funding arranged) by the proponent, and will be identified, with the appropriate fund code, in the EPR (AR 200–1). Mitigations will be monitored through environmental compliance reporting, such as the ISR (AR 200–1) or the Environmental Quality Report. Mitigation measures are identified and funded in accordance with applicable laws, regulations, or other media area requirements.

(c) Based upon the analysis and selection of mitigation measures that reduce environmental impacts until they are no longer significant, an EA may result in a FNSI. If a proponent uses mitigation measures in such a manner, the FNSI must identify these mitigating measures, and they become legally binding and must be accomplished as the project is implemented. If any of these identified mitigation measures do not occur, so that significant adverse environmental effects could reasonably expected to result, the proponent must publish an NOI and prepare an EIS.

(d) Potential mitigation measures that appear practical, and are unobtainable within expected Army resources, or that some other agency (including non-Army agencies) should perform, will be identified in the NEPA analysis to the maximum extent practicable. A number of factors determine what is practical, including military mission, manpower restrictions, cost, institutional barriers, technical feasibility, and public acceptance. Practicality does not necessarily ensure resolution of conflicts among these items, rather it is the degree of conflict that determines practicality. Although mission conflicts are inevitable, they are not necessarily insurmountable; and the proponent should be cautious about declaring all mitigations impractical and carefully consider any manpower requirements. The key point concerning both the manpower and cost constraints is that, unless money is actually budgeted and manpower assigned, the mitigation does not exist. Coordination by the proponent early in the process will be required to allow ample time to get the mitigation activities into the budget cycle. The project cannot be undertaken until all required mitigation efforts are fully resourced, or until the lack of funding and resultant effects, are fully addressed in the NEPA analysis.

(e) Mitigation measures that were considered but rejected, including those that can be accomplished by other agencies, must be discussed, along with the reason for the rejection, within the EA or EIS. If they occur in an EA, their rejection may lead to an EIS, if the resultant unmitigated impacts are significant.

(f) Proponents may request assistance with mitigation from cooperating non-Army agencies, when appropriate. Such assistance is appropriate when the requested agency was a cooperating agency during preparation of a NEPA document, or has the technology, expertise, time, funds, or familiarity with the project or the local ecology necessary to implement the mitigation measure more effectively than the lead agency.

(g) The proponent agency or other appropriate cooperating agency will implement mitigations and other conditions established in the EA or EIS, or commitments made in the FNSI or ROD. Legal documents implementing the action (such as contracts, permits, grants) will specify mitigation measures to be performed. Penalties against a contractor for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(h) A monitoring and enforcement program for any mitigation will be adopted and summarized in the NEPA documentation (see Appendix C of this part for guidelines on implementing such a program). Whether adoption of a monitoring and enforcement program is applicable (40 CFR 1505.2(c)) and whether the specific adopted action requires monitoring (40 CFR 1505.3) may depend on the following:

(1) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited);

(2) The outcome of the mitigation measure is uncertain (for example, new technology);

(3) Major environmental controversy remains associated with the selected alternative; or

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in a failure to meet achievement of requirements (such as adverse effects on federal or state listed endangered or threatened species, important historic or archaeological sites that are either listed or eligible for nomination to the National Register of Historic Places, wilderness areas, wild and scenic rivers, or other public or private protected resources). Proponents must follow local installation environmental office procedures to coordinate with appropriate federal, tribal, state, or local agencies responsible for a particular program to determine what would constitute ''adverse effects.''

(i) Monitoring is an integral part of any mitigation system.

(1) Enforcement monitoring ensures that mitigation is being performed as described in the NEPA documentation, mitigation requirements and penalty clauses are written into any contracts, and required provisions are enforced. The development of an enforcement monitoring program is governed by who will actually perform the mitigation: a contractor, a cooperating agency, or an in-house (Army) lead agency. Detailed guidance is contained in Appendix C of this part. The proponent is ultimately responsible for performing any mitigation activities. All monitoring results will be sent to the installation Environmental Office; in the case of the Army Reserves, the Regional Support Commands (RSCs); and, in the case of the National Guard, the NGB.

(2) Effectiveness monitoring measures the success of the mitigation effort and/or the environmental effect. While quantitative measurements are desired, qualitative measures may be required. The objective is to obtain enough information to judge the effect of the mitigation. In establishing the monitoring system, the responsible agent should coordinate the monitoring with the Environmental Office. Specific steps and guidelines are included in Appendix C of this part.

(j) The monitoring program, in most cases, should be established well before the action begins, particularly when biological variables are being measured and investigated. At this stage, any necessary contracts, funding, and manpower assignments must be initiated. Technical results from the analysis should be summarized by the proponent and coordinated with the installation Environmental Office. Subsequent coordination with the concerned public and other agencies, as arranged through development of the mitigation plan, will be handled through the Environmental Office.

(k) If the mitigations are effective, the monitoring should be continued as long as the mitigations are needed to address impacts of the initial action. If the mitigations are ineffective, the proponent and the responsible group should re-examine the mitigation measures, in consultation with the Environmental Office and appropriate experts, and resolve the inadequacies of the mitigation or monitoring. Professionals with specialized and recognized expertise in the topic or issue, as well as concerned citizens, are essential to the credibility of this review. If a different program is required, then a new system must be established. If ineffective mitigations are identified which were required to reduce impact below significance levels (§ 651.35 (g)), the proponent may be required to publish an NOI and prepare an EIS (paragraph (c) of this section).

(l) Environmental monitoring report. An environmental monitoring report is prepared at one or more points after program or action execution. Its purpose is to determine the accuracy of impact predictions. It can serve as the basis for adjustments in mitigation programs and to adjust impact predictions in future projects. Further guidance and clarification are included in Appendix C of this part.

§ 651.16 Cumulative impacts.

(a) NEPA analyses must assess cumulative effects, which are the impact on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Actions by federal, non-federal agencies, and private parties must be considered (40 CFR 1508.7).

(b) The scoping process should be used to identify possible cumulative impacts. The proponent should also contact appropriate off-post officials, such as tribal, state, county, or local planning officials, to identify other actions that should be considered in the cumulative effects analysis.

(c) A suggested cumulative effects approach is as follows:

(1) Identify the boundary of each resource category. Boundaries may be geographic or temporal. For example, the Air Quality Control Region (AQCR) might be the appropriate boundary for the air quality analysis, while a watershed could be the boundary for the water quality analysis. Depending upon the circumstances, these boundaries could be different and could extend off the installation.

(2) Describe the threshold level of significance for that resource category. For example, a violation of air quality standards within the AQCR would be an appropriate threshold level.

(3) Determine the environmental consequence of the action. The analysis should identify the cause and effect relationships, determine the magnitude and significance of cumulative effects, and identify possible mitigation measures.

§ 651.17 Environmental justice.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, 11 February 1994, 3 CFR, 1994 Comp., p. 859) requires the proponent to determine whether the proposed action will have a disproportionate impact on minority or low-income communities, both off-post and on-post.

Subpart C–Records and Documents

§ 651.18 Introduction.

NEPA documentation will be prepared and published double-sided on recycled paper. The recycled paper symbol should be presented on the inside of document covers.

§ 651.19 Record of environmental consideration.

A Record of Environmental Consideration (REC) is a signed statement submitted with project documentation that briefly documents that an Army action has received environmental review. RECs are prepared for CXs that require them, and for actions covered by existing or previous NEPA documentation. A REC briefly describes the proposed action and timeframe, identifies the proponent and approving official(s), and clearly shows how an action qualifies for a CX, or is already covered in an existing EA or EIS. When used to support a CX, the REC must address the use of screening criteria to ensure that no extraordinary circumstances or situations exist. A REC has no prescribed format, as long as the above information is included. To reduce paperwork, a REC can reference such documents as real estate Environmental Baseline Studies (EBSs) and other documents, as long as they are readily available for review. While a REC may document compliance with the requirements of NEPA, it does not fulfill the requirements of other environmental laws and regulations. Figure 3 illustrates a possible format for the REC as follows:

Record of Environmental Consideration (REC)

To: (Environmental Officer)
From: (Proponent)
Project title:
Breif description:

Anticipated date and/or duration of proposed action: (Month/year)

Reason for using record of environmental consideration (choose one):

a. Adequantely covered in an (EA, EIS) entitled _____, dated _____,

The EA/EIS may be reviewed at _____, (location)

OR,

b. Is categorically excluded under the provisions of CX _____, AR 200-2, appendix A, (and no extraordinary circumstances exist as defined in paragraph 4-3), because

_____

_____

_____

Date Project Proponent

_____

Date Installation Environmental Coordinator

Variation from this format is acceptable provided basic information and approvals are included in any modified document.

Figure 3. Suggested format for Record of Environmental Consideration.

§ 651.20 Environmental assessment.

An EA is intended to assist agency planning and decision-making. While required to assess environmental impacts and evaluate their significance, it is routinely used as a planning document to evaluate environmental impacts, develop alternatives and mitigation measures, and allow for agency and public participation. It:

(a) Briefly provides the decision maker with sufficient evidence and analysis for determining whether a FNSI or an EIS should be prepared.

(b) Assures compliance with NEPA, if an EIS is not required and a CX is inappropriate.

(c) Facilitates preparation of an EIS, if required.

(d) Includes brief discussions of the need for the proposed action, alternatives to the proposed action (NEPA, section 102(2)(e)), environmental impacts, and a listing of persons and agencies consulted (see Subpart E of this part for requirements).

(e) The EA provides the proponent, the public, and the decision maker with sufficient evidence and analysis for determining whether environmental impacts of a proposed action are potentially significant. An EA is substantially less rigorous and costly than an EIS, but requires sufficient detail to identify and ascertain the significance of expected impacts associated with the proposed action and its alternatives. The EA can often provide the required ''hard look'' at the potential environmental effects of an action, program, or policy within 1 to 25 pages, depending upon the nature of the action and project-specific conditions.

§ 651.21 Finding of no significant impact.

A Finding of No Significant Impact (FNSI) is a document that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, that an EIS will not be prepared. The FNSI includes a summary of the EA and notes any related NEPA documentation. If the EA is attached, the FNSI need not repeat any of the EA discussion, but may incorporate it by reference. The draft FNSI will be made available to the public for review and comment for 30 days prior to the initiation of an action, except in special circumstances when the public comment period is reduced to 15 days, as discussed in § 651.14(b)(2)(iii). Following the comment period and review of public comments, the proponent forwards a decision package that includes a comparison of environmental impacts associated with reasonable alternatives, summary of public concerns, revised FNSI (if necessary), and recommendations for the decision maker. The decision maker reviews the package, makes a decision, and signs the FNSI or the NOI (if the FNSI no longer applies). If a FNSI is signed by the decision maker, the action can proceed immediately.

§ 651.22 Notice of intent.

A Notice of Intent (NOI) is a public notice that an EIS will be prepared. The NOI will briefly:

(a) Describe the proposed and alternative actions.

(b) Describe the proposed scoping process, including when and where any public meetings will be held.

(c) State the name and address of the POC who can answer questions on the proposed action and the EIS (see § 651.45(a) and § 651.49 for application).

§ 651.23 Environmental impact statement.

An Environmental Impact statement (EIS) is a detailed written statement required by NEPA for major federal actions significantly affecting the quality of the human environment (42 U.S.C. 4321). A more complete discussion of EIS requirements is presented in Subpart F of this part.

§ 651.24 Supplemental EAs and supplemental EISs.

As detailed in § 651.5(g) and in 40 CFR 1502.9(c), proposed actions may

require review of existing NEPA documentation. If conditions warrant a supplemental document, these documents are processed in the same way as an original EA or EIS. No new scoping is required for a supplemental EIS filed within one year of the filing of the original ROD. If the review indicates no need for a supplement, that determination will be documented in a REC.

§ 651.25 Notice of availability.

The Notice of Availability (NOA) is published by the Army to inform the public and others that a NEPA document is available for review. A NOA will be published in the FR, coordinating with EPA for draft and final EISs (including supplements), for RODs, and for EAs and FNSIs which are of national concern, are unprecedented, or normally require an EIS. EAs and FNSIs of local concern will be made available in accordance with § 651.36. This agency NOA should not be confused with the EPA's notice of availability of weekly receipts (NWR)[3] of EISs.

§ 651.26 Record of decision.

The Record of Decision (ROD) is a concise public document summarizing the findings in the EIS and the basis for the decision. A public ROD is required under the provisions of 40 CFR 1505.2 after completion of an EIS (see § 651.45 (j) for application). The ROD must identify mitigations which were important in supporting decisions, such as those mitigations which reduce otherwise significant impacts, and ensure that appropriate monitoring procedures are implemented (see § 651.15 for application).

§ 651.27 Programmatic NEPA analyses.

These analyses, in the form of an EA or EIS, are useful to examine impacts of actions that are similar in nature or broad in scope. These documents allow the ''tiering'' of future NEPA documentation in cases where future decisions or unknown future conditions preclude complete NEPA analyses in one step. These documents are discussed further in § 651.14(c).

Subpart D—Categorical Exclusions

§ 651.28 Introduction.

Categorical Exclusions (CXs) are categories of actions with no individual or cumulative effect on the human or natural environment, and for which neither an EA nor an EIS is required. The use of a CX is intended to reduce paperwork and eliminate delays in the initiation and completion of proposed actions that have no significant impact.

§ 651.29 Determining when to use a CX (screening criteria).

(a) To use a CX, the proponent must satisfy the following three screening conditions:

(1) The action has not been segmented. Determine that the action has not been segmented to meet the definition of a CX. Segmentation can occur when an action is broken down into small parts in order to avoid the appearance of significance of the total action. An action can be too narrowly defined, minimizing potential impacts in an effort to avoid a higher level of NEPA documentation. The scope of an action must include the consideration of connected, cumulative, and similar actions (see § 651.51(a)).

(2) No exceptional circumstances exist. Determine if the action involves extraordinary circumstances that would preclude the use of a CX (see paragraphs (b) (1) through (14) of this section).

(3) One (or more) CX encompasses the proposed action. Identify a CX (or multiple CXs) that potentially encompasses the proposed action (Appendix B of this part). If no CX is appropriate, and the project is not exempted by statute or emergency provisions, an EA or an EIS must be prepared, before a proposed action may proceed.

(b) Extraordinary circumstances that preclude the use of a CX are:

(1) Reasonable likelihood of significant effects on public health, safety, or the environment.

(2) Reasonable likelihood of significant environmental effects (direct, indirect, and cumulative).

(3) Imposition of uncertain or unique environmental risks.

(4) Greater scope or size than is normal for this category of action.

(5) Reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(6) Releases of petroleum, oils, and lubricants (POL) except from a properly functioning engine or vehicle, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(7) When a review of an action that might otherwise qualify for a Record of Non-applicability (RONA) reveals that air emissions exceed de minimis levels or otherwise that a formal Clean Air Act conformity determination is required.

(8) Reasonable likelihood of violating any federal, state, or local law or requirements imposed for the protection of the environment.

(9) Unresolved effect on environmentally sensitive resources, as defined in paragraph (c) of this section.

(10) Involving effects on the quality of the environment that are likely to be highly controversial.

(11) Involving effects on the environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial.

(12) Establishes a precedent (or makes decisions in principle) for future or subsequent actions that are reasonably likely to have a future significant effect.

(13) Potential for degradation of already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(14) Introduction/employment of unproven technology.

(c) If a proposed action would adversely affect ''environmentally sensitive'' resources, unless the impact has been resolved through another environmental process (e.g., CZMA, NHPA, CWA, etc.) a CX cannot be used (see paragraph (e) of this section). Environmentally sensitive resources include:

(1) Proposed federally listed, threatened, or endangered species or their designated critical habitats.

(2) Properties listed or eligible for listing on the National Register of Historic Places (AR 200–4).

(3) Areas having special designation or recognition such as prime or unique agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); 100-year floodplains; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

(4) Cultural Resources as defined in AR 200–4.

(d) The use of a CX does not relieve the proponent from compliance with other statutes, such as RCRA, or consultations under the Endangered Species Act or the NHPA. Such consultations may be required to determine the applicability of the CX screening criteria.

(e) For those CXs that require a REC, a brief (one to two sentence) presentation of conclusions reached during screening is required in the REC.

[3] This notice is published by the EPA and officially begins the public review period. The NWR is published each Friday, and lists the EISs that were filed the previous week.

This determination can be made using current information and expertise, if available and adequate, or can be derived through conversation, as long as the basis for the determination is included in the REC. Copies of appropriate interagency correspondence can be attached to the REC. Example conclusions regarding screening criteria are as follows:

(1) ''USFWS concurred in informal coordination that E/T species will not be affected''.

(2) ''Corps of Engineers determined action is covered by nationwide general permit''.

(3) ''SHPO concurred with action''.

(4) ''State Department of Natural Resources concurred that no effect to state sensitive species is expected''.

§ 651.30 CX actions.

Types of actions that normally qualify for CX are listed in Appendix B of this part.

§ 651.31 Modification of the CX list.

The Army list of CXs is subject to continual review and modification, in consultation with CEQ. Additional modifications can be implemented through submission, through channels, to ASA (I&E) for consideration and consultation. Subordinate Army headquarters may not modify the CX list through supplements to this part. Upon approval, proposed modifications to the list of CXs will be published in the **Federal Register**, providing an opportunity for public review and comment.

Subpart E—Environmental Assessment

§ 651.32 Introduction.

(a) An EA is intended to facilitate agency planning and informed decision-making, helping proponents and other decision makers understand the potential extent of environmental impacts of a proposed action and its alternatives, and whether those impacts (or cumulative impacts) are significant. The EA can aid in Army compliance with NEPA when no EIS is necessary. An EA will be prepared if a proposed action:

(1) Is not an emergency (§ 651.11(b)).

(2) Is not exempt from (or an exception to) NEPA (§ 651.11(a)).

(3) Does not qualify as a CX (§ 651.11(c)).

(4) Is not adequately covered by existing NEPA analysis and documentation (§ 651.19).

(5) Does not normally require an EIS (§ 651.42).

(b) An EA can be 1 to 25 pages in length and be adequate to meet the requirements of this part, depending upon site-specific circumstances and conditions. Any analysis that exceeds 25 pages in length should be evaluated to consider whether the action and its effects are significant and thus warrant an EIS.

§ 651.33 Actions normally requiring an EA.

The following Army actions normally require an EA, unless they qualify for the use of a CX:

(a) Special field training exercises or test activities in excess of five acres on Army land of a nature or magnitude not within the annual installation training cycle or installation master plan.

(b) Military construction that exceeds five contiguous acres, including contracts for off-post construction.

(c) Changes to established installation land use that generate impacts on the environment.

(d) Alteration projects affecting historically significant structures, archaeological sites, or places listed or eligible for listing on the National Register of Historic Places.

(e) Actions that could cause significant increase in soil erosion, or affect prime or unique farmland (off Army property), wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, prime or unique wildlife habitat, or wild and scenic rivers.

(f) Actions proposed during the life cycle of a weapon system if the action produces a new hazardous or toxic material or results in a new hazardous or toxic waste, and the action is not adequately addressed by existing NEPA documentation. Examples of actions normally requiring an EA during the life cycle include, but are not limited to, testing, production, fielding, and training involving natural resources, and disposal/demilitarization. System design, development, and production actions may require an EA, if such decisions establish precedent (or make decisions, in principle) for future actions with potential environmental effects. Such actions should be carefully considered in cooperation with the development or production contractor or government agency, and NEPA analysis may be required.

(g) Development and approval of installation master plans.

(h) Development and implementation of Integrated Natural Resources Management Plans (INRMPs) (land, forest, fish, and wildlife) and Integrated Cultural Resources Management Plans (ICRMPs).

(i) Actions that take place in, or adversely affect, important wildlife habitats, including wildlife refuges.

(j) Field activities on land not controlled by the military, except those that do not alter land use to substantially change the environment (for example, patrolling activities in a forest). This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground level into the national airspace. It also includes joint air attack training that may require participating aircraft to exceed 250 knots at altitudes below 3000 feet above ground level, and helicopters, at any speed, below 500 feet above ground level.

(k) An action with substantial adverse local or regional effects on energy or water availability. Such impacts can only be adequately identified with input from local agencies and/or citizens.

(l) Production of hazardous or toxic materials.

(m) Changes to established airspace use that generate impacts on the environment or socioeconomic systems, or create a hazard to non-participants.

(n) An installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program/plan.

(o) Acquisition, construction, or alteration of (or space for) a laboratory that will use hazardous chemicals, drugs, or biological or radioactive materials.

(p) An activity that affects a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.

(q) Substantial proposed changes in Army-wide doctrine or policy that potentially have an adverse effect on the environment (40 CFR 1508.18 (b)(1)).

(r) An action that may threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment.

(s) The construction and operation of major new fixed facilities or the substantial commitment of installation natural resources supporting new materiel at the installation.

§ 651.34 EA components.

EAs should be 1 to 25 pages in length, and will include:

(a) Signature (Review and Approval) page.

(b) Purpose and need for the action.

(c) Description of the proposed action.

(d) Alternatives considered. The alternatives considered, including appropriate consideration of the ''No Action'' alternative, the ''Proposed Action,'' and all other appropriate and reasonable alternatives that can be realistically accomplished. In the discussion of alternatives, any criteria

for screening alternatives from full consideration should be presented, and the final disposition of any alternatives that were initially identified should be discussed.

(e) Affected environment. This section must address the general conditions and nature of the affected environment and establish the environmental setting against which environmental effects are evaluated. This should include any relevant general baseline conditions focusing on specific aspects of the environment that may be impacted by the alternatives. EBSs and similar real estate or construction environmental baseline documents, or their equivalent, may be incorporated and/or referenced.

(f) Environmental consequences. Environmental consequences of the proposed action and the alternatives. The document must state and assess the effects (direct, indirect, and cumulative) of the proposed action and its alternatives on the environment, and what practical mitigation is available to minimize these impacts. Discussion and comparison of impacts should provide sufficient analysis to reach a conclusion regarding the significance of the impacts, and is not merely a quantification of facts.

(g) Conclusions regarding the impacts of the proposed action. A clear statement will be provided regarding whether or not the described impacts are significant. If the EA identifies potential significant impacts associated with the proposed action, the conclusion should clearly state that an EIS will be prepared before the proposed action is implemented. If no significant impacts are associated with the project, the conclusion should state that a FNSI will be prepared. Any mitigations that reduce adverse impacts must be clearly presented. If the EA depends upon mitigations to support a resultant FNSI, these mitigations must be clearly identified as a subsection of the Conclusions.

(h) Listing of preparers, and agencies and persons consulted. Copies of correspondence to and from agencies and persons contacted during the preparation of the EA will be available in the administrative record and may be included in the EA as appendices. In addition, the list of analysts/preparers will be presented.

(i) References. These provide bibliographic information for cited sources. Draft documents should not be cited as references without the expressed permission of the proponent of the draft material.

§ 651.35 Decision process.

(a) An EA results in either a FNSI or an NOI to prepare an EIS. Initiation of an NOI to prepare an EIS should occur at any time in the decision process when it is determined that significant effects may occur as a result of the proposed action. The proponent should notify the decision maker of any such determination as soon as possible.

(b) The FNSI is a document (40 CFR 1508.13) that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, an EIS will not be prepared. It summarizes the EA, noting any NEPA documents that are related to, but are not part of, the scope of the EA under consideration. If the EA is attached, the FNSI may incorporate the EA's discussion by reference. The draft FNSI will be made available to the public for review and comment for 30 days prior to the initiation of an action (see § 651.14(b)(2)(iii) for an exception). Following the comment period, the decision maker signs the FNSI, and the action can proceed. It is important that the final FNSI reflect the decision made, the response to public comments, and the basis for the final decision.

(c) The FNSI must contain the following:

(1) The name of the action.

(2) A brief description of the action (including any alternatives considered).

(3) A short discussion of the anticipated environmental effects.

(4) The facts and conclusions that have led to the FNSI.

(5) A deadline and POC for further information or receipt of public comments (see § 651.47).

(d) The FNSI is normally no more than two typewritten pages in length.

(e) The draft FNSI will be made available to the public prior to initiation of the proposed action, unless it is a classified action (see § 651.13 for security exclusions). Draft FNSIs that have national interest should be submitted with the proposed press release, along with a Questions and Answers (Q&A) package, through command channels to ASA(I&E) for approval and subsequent publication in the FR. Draft FNSIs having national interest will be coordinated with OCPA. Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(f) For actions of only regional or local interest, the draft FNSI will be publicized in accordance with § 651.14(b)(2). Distribution of the draft FNSI should include any agencies, organizations, and individuals that have expressed interest in the project, those who may be affected, and others deemed appropriate.

(g) Some FNSIs will require the implementation of mitigation measures to reduce potential impacts below significance levels, thereby eliminating the requirement for an EIS. In such instances, the following steps must be taken:

(1) The EA must be made readily available to the public for review through traditional publication and distribution, and through the World Wide Web (WWW) or similar technology. This distribution must be planned to ensure that all appropriate entities and stakeholders have easy access to the material. Ensuring this availability may necessitate the distribution of printed information at locations that are readily accessible and frequented by those who are affected or interested.

(2) Any identified mitigations must be tracked to ensure implementation, similar to those specified in an EIS and ROD.

(3) The EA analysis procedures must be sufficiently rigorous to identify and analyze impacts that are individually or cumulatively significant.

(h) The proponent is responsible for funding the preparation, staffing, and distribution of the draft FNSI and EA package, and the incorporation of public/agency review and comment. The proponent shall also ensure appropriate public and agency meetings, which may be required to facilitate the NEPA process in completing the EA. The decision maker will approve and sign the EA and FNSI documents. Proponents will ensure that the EA and FNSI, to include drafts, are provided in electronic format to allow for maximum information flow throughout the process.

(i) The proponent should ensure that the decision maker is continuously informed of key findings during the EA process, particularly with respect to potential impacts and controversy related to the proposed action.

§ 651.36 Public involvement.

(a) The involvement of other agencies, organizations, and individuals in the development of EAs and EISs enhances collaborative issue identification and problem solving. Such involvement demonstrates that the Army is committed to open decision-making and builds the necessary community trust that sustains the Army in the long term. Public involvement is mandatory for EISs (see § 651.47 and Appendix D of this part for information on public involvement requirements).

(b) Environmental agencies and the public will be involved to the extent practicable in the preparation of an EA. If the proponent elects to involve the public in the development of an EA, § 651.47 and Appendix D of this part may be used as guidance. When considering the extent practicable of public interaction (40 CFR 1501.4(b)), factors to be weighed include:

(1) Magnitude of the proposed project/action.

(2) Extent of anticipated public interest, based on experience with similar proposals.

(3) Urgency of the proposal.

(4) National security classification.

(5) The presence of minority or economically-disadvantaged populations.

(c) Public involvement must begin early in the proposal development stage, and during preparation of an EA. The direct involvement of agencies with jurisdiction or special expertise is an integral part of impact analysis, and provides information and conclusions for incorporation into EAs. Unclassified documents incorporated by reference into the EA or FNSI are public documents.

(d) Copies of public notices, ''scoping'' letters, EAs, draft FNSIs, FNSIs, and other documents routinely sent to the public will be sent directly to appropriate congressional, state, and district offices.

(e) To ensure early incorporation of the public into the process, a plan to include all interested or affected parties should be developed at the beginning of the analysis and documentation process. Open communication with the public is encouraged as a matter of Army policy, and the degree of public involvement varies. Appropriate public notice of the availability of the completed EA/draft FNSI shall be made (see § 651.35) (see also AR 360–5 (Public Information)). The plan will include the following:

(1) Dissemination of information to local and installation communities.

(2) Invitation and incorporation of public comments on Army actions.

(3) Consultation with appropriate persons and agencies.

(f) Further guidance on public participation requirements (to potentially be used for EAs and EISs, depending on circumstances) is presented in Appendix D of this part.

§ 651.37 Public availability.

Documents incorporated into the EA or FNSI by reference will be available for public review. Where possible, use of public libraries and a list of POCs for supportive documents is encouraged. A depository should be chosen which is open beyond normal business hours. To the extent possible, the WWW should also be used to increase public availability of documents.

§ 651.38 Existing environmental assessments.

EAs are dynamic documents. To ensure that the described setting, actions, and effects remain substantially accurate, the proponent or installation Environmental Officer is encouraged to periodically review existing documentation that is still relevant or supporting current action. If an action is not yet completed, substantial changes in the proposed action may require supplementation, as specified in § 651.5 (g).

§ 651.39 Significance.

(a) If the proposed action may or will result in significant impacts to the environment, an EIS is prepared to provide more comprehensive analyses and conclusions about the impacts. Significant impacts of socioeconomic consequence alone do not merit an EIS.

(b) Significance of impacts is determined by examining both the context and intensity of the proposed action (40 CFR 1508.27). The analysis should establish, by resource category, the threshold at which significance is reached. For example, an action that would violate existing pollution standards; cause water, air, noise, soil, or underground pollution; impair visibility for substantial periods; or cause irreparable harm to animal or plant life could be determined significant. Significant beneficial effects also occur and must be addressed, if applicable.

(c) The proponent should use appropriate methods to identify and ascertain the ''significance'' of impacts. The use of simple analytical tools, which are subject to independent peer review, fully documented, and available to the public, is encouraged.[4] In particular, where impacts are unknown or are suspected to be of public interest, public involvement should be initiated early in the EA (scoping) process.

Subpart F—Environmental Impact Statement

§ 651.40 Introduction.

(a) An EIS is a public document designed to ensure that NEPA policies and goals are incorporated early into the programs and actions of federal agencies. An EIS is intended to provide a full, open, and balanced discussion of significant environmental impacts that may result from a proposed action and alternatives, allowing public review and comment on the proposal and providing a basis for informed decision-making.

(b) The NEPA process should support sound, informed, and timely (early) decision-making; not produce encyclopedic documents. CEQ guidance (40 CFR 1502.7) should be followed, establishing a page limit of 150 pages (300 pages for complex projects). To the extent practicable, EISs will ''incorporate by reference'' any material that is reasonably available for inspection by potentially interested persons within the time allowed for comment. The incorporated material shall be cited in the EIS and its content will be briefly described. Material based on proprietary data, that is itself not available for review and comment, shall not be incorporated by reference.

§ 651.41 Conditions requiring an EIS.

An EIS is required when a proponent, preparer, or approving authority determines that the proposed action has the potential to:

(a) Significantly affect environmental quality, or public health or safety.

(b) Significantly affect historic (listed or eligible for listing in the National Register of Historic Places, maintained by the National Park Service, Department of Interior), or cultural, archaeological, or scientific resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, or aquifers.

(c) Significantly impact prime and unique farmlands located off-post, wetlands, floodplains, coastal zones, or ecologically important areas, or other areas of unique or critical environmental sensitivity.

(d) Result in significant or uncertain environmental effects, or unique or unknown environmental risks.

(e) Significantly affect a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.

(f) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(g) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(h) Involve the production, storage, transportation, use, treatment, and disposal of hazardous or toxic materials

[4] EIFS is one such Army system for evaluating regional economic impacts under NEPA. This system is mandated, as Army policy, for use in NEPA analyses. Other similar tools may be mandated for use in the Army, and will be documented in guidance published pursuant to this part.

that may have significant environmental impact.

(i) Be highly controversial from an environmental standpoint.

(j) Cause loss or destruction of significant scientific, cultural, or historical resources.

§ 651.42 Actions normally requiring an EIS.

The following actions normally require an EIS:

(a) Significant expansion of a military facility or installation.

(b) Construction of facilities that have a significant effect on wetlands, coastal zones, or other areas of critical environmental concern.

(c) The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances that have the potential to cause significant environmental impact.

(d) Land acquisition, leasing, or other actions that may lead to significant changes in land use.

(e) Realignment or stationing of a brigade or larger table of organization equipment (TOE) unit during peacetime (except where the only significant impacts are socioeconomic, with no significant biophysical environmental impact).

(f) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

(g) Major changes in the mission or facilities either affecting environmentally sensitive resources (see § 651.29(c)) or causing significant environmental impact (see § 651.39).

§ 651.43 Format of the EIS.

The EIS should not exceed 150 pages in length (300 pages for very complex proposals), and must contain the following (detailed content is discussed in Appendix E of this part):

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for the action.

(e) Alternatives considered, including proposed action and no-action alternative.

(f) Affected environment (baseline conditions) that may be impacted.

(g) Environmental and socioeconomic consequences.

(h) List of preparers.

(i) Distribution list.

(j) Index.

(k) Appendices (as appropriate).

§ 651.44 Incomplete information.

When the proposed action will have significant adverse effects on the human environment, and there is incomplete or unavailable information, the proponent will ensure that the EIS addresses the issue as follows:

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the Army will include the information in the EIS.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known (for example, the means for obtaining it are beyond the state of the art), the proponent will include in the EIS:

(1) A statement that such information is incomplete or unavailable.

(2) A statement of the relevance of the incomplete or unavailable information to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(4) An evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

§ 651.45 Steps in preparing and processing an EIS.

(a) *NOI.* The NOI initiates the formal scoping process and is prepared by the proponent.

(1) Prior to preparing an EIS, an NOI will be published in the FR and in newspapers with appropriate or general circulation in the areas potentially affected by the proposed action. The OCLL will be notified by the ARSTAF proponent of pending EISs so that congressional coordination may be effected. After the NOI is published in the FR, copies of the notice may also be distributed to agencies, organizations, and individuals, as the responsible official deems appropriate.

(2) The NOI transmittal package includes the NOI, the press release, information for Members of Congress, memorandum for correspondents, and a ''questions and answers'' (Q&A) package. The NOI shall clearly state the proposed action and alternatives, and state why the action may have unknown and/or significant environmental impacts.

(3) The proponent forwards the NOI and the transmittal package to the appropriate HQDA (ARSTAF) proponent for coordination and staffing prior to publication. The ARSTAF proponent will coordinate the NOI with HQDA (ODEP), OCLL, TJAG, OGC, OCPA, relevant MACOMs, and others). Only the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA(ESOH)) can authorize release of an NOI to the FR for publication, unless that authority has been delegated. A cover letter (similar to Figure 5 in § 651.46) will accompany the NOI. An example NOI is shown in Figure 6 in § 651.46.

(b) *Lead and cooperating agency determination.* As soon as possible after the decision is made to prepare an EIS, the proponent will contact appropriate federal, tribal, state, and local agencies to identify lead or cooperating agency responsibilities concerning EIS preparation. At this point, a public affairs plan must be developed. In the case of State ARNG actions that have federal funding, the NGB will be the lead agency for the purpose of federal compliance with NEPA. The State may be either a joint lead or a cooperating agency, as determined by NGB.

(c) *Scoping.* The proponent will begin the scoping process described in § 651.48. Portions of the scoping process may take place prior to publication of the NOI.

(d) *DEIS preparation and processing.* Prior to publication of a DEIS, the proponent can prepare a PDEIS, allowing for internal organization and the resolution of internal Army consideration, prior to a formal request for comments.

(1) *PDEIS.* Based on information obtained and decisions made during the scoping process, the proponent may prepare the PDEIS. To expedite headquarters review, a summary document is also required to present the purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring. This summary will be forwarded, through the chain of command, to ODEP, the DASA(ESOH), and other interested offices for review and comment. If requested by these offices, a draft PDEIS can be provided following review of the summary. The PDEIS is not normally made available to the public and should be stamped ''For Internal Use Only-Deliberative Process.''

(2) *DEIS.* The Army proponent will advise the DEIS preparer of the number of copies to be forwarded for final HQDA review and those for filing with the EPA. Distribution may include interested congressional delegations and committees, governors, national environmental organizations, the DOD and federal agency headquarters, and

other selected entities. The Army proponent will finalize the FR NOA, the proposed news release, and the EPA filing letter for signature of the DASA(ESOH). A revised process summary of the contents (purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring) will accompany the DEIS to HQDA for review and comment. If the action has been delegated by the ASA(I&E), only the process summary is required, unless the DEIS is requested by HQDA.

(i) When the DEIS has been formally approved, the preparer can distribute the DEIS to the remainder of the distribution list. The DEIS must be distributed prior to, or simultaneously with, filing with EPA. The list includes federal, state, regional, and local agencies, private citizens, and local organizations. The EPA will publish the NOA in the FR. The 45-day comment period begins on the date of the EPA notice in the FR.

(ii) Following approval, the proponent will forward five copies of the DEIS to EPA for filing and notice in the FR; publication of EPA's NWR commences the public comment period. The proponent will distribute the DEIS prior to, or simultaneously with, filing with EPA. Distribution will include appropriate federal, state, regional, and local agencies; Native American tribes; and organizations and private citizens who have expressed interest in the proposed action.

(iii) For proposed actions that are environmentally controversial, or of national interest, the OCLL shall be notified of the pending action so that appropriate congressional coordination may be effected. The OCPA will coordinate public announcements through its chain of command. Proponents will ensure that the DEIS and subsequent NEPA documents are provided in electronic format to allow for maximum information flow throughout the process.

(e) *Public review of DEIS.* The DEIS public comment period will be no less than 45 days. If the statement is unusually long, a summary of the DEIS may be circulated, with an attached list of locations where the entire DEIS may be reviewed (for example, local public libraries). Distribution of the complete DEIS should be accompanied by the announcement of availability in established newspapers of major circulation, and must include the following:

(1) Any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate federal, state, or local agency authorized to develop and enforce environmental standards.

(2) The applicant, if the proposed action involves any application of proposal for the use of Army resources.

(3) Any person, organization, or agency requesting the entire DEIS.

(4) Any Indian tribes, Native Alaskan organizations, or Native Hawaiian organizations potentially impacted by the proposed action.

(5) Chairs/co-chairs of any existing citizen advisory groups (for example, Restoration Advisory Boards).

(f) *Public meetings or hearings.* Public meetings or hearings on the DEIS will be held in accordance with the criteria established in 40 CFR 1506.6(c) and (d) or for any other reason the proponent deems appropriate. News releases should be prepared and issued to publicize the meetings or hearings at least 15 days prior to the meeting.

(g) *Response to comments.* Comments will be incorporated in the DEIS by modification of the text and/or written explanation. Where possible, similar comments will be grouped for a common response. The preparer or a higher authority may make individual response, if considered desirable.

(h) *The FEIS.* If the changes to the DEIS are exclusively clarifications or minor factual corrections, a document consisting of only the DEIS comments, responses to the comments, and errata sheets may be prepared and circulated. If such an abbreviated FEIS is anticipated, the DEIS should contain a statement advising reviewers to keep the document so they will have a complete set of ''final'' documents. The final EIS to be filed with EPA will consist of a complete document containing a new cover sheet, the errata sheets, comments and responses, and the text of the draft EIS. Coordination, approval, filing, and public notice of an abbreviated FEIS are the same as for a draft DEIS. If extensive modifications are warranted, the proponent will prepare a new, complete FEIS. Preparation, coordination, approval, filing, and public notice of the FEIS are the same as the process outlined for the DEIS. The FEIS distribution must include any person, organization, or agency that submitted substantive comments on the DEIS. One copy (electronic) of the FEIS will be forwarded to ODEP. The FEIS will clearly identify the Army's preferred alternative unless prohibited by law.

(i) *Decision.* No decision will be made on a proposed action until 30 days after EPA has published the NWR of the FEIS in the FR, or 90 days after the NWR of the DEIS, whichever is later. EPA publishes NWRs weekly. Those NWRs ready for EPA by close of business Friday are published in the next Friday's issue of the FR.

(j) *ROD.* The ROD documents the decision made and the basis for that decision.

(1) The proponent will prepare a ROD for the decision maker's signature, which will:

(i) Clearly state the decision by describing it in sufficient detail to address the significant issues and ensure necessary long-term monitoring and execution.

(ii) Identify all alternatives considered by the Army in reaching its decision, specifying the environmentally preferred alternative(s). The Army will discuss preferences among alternatives based on relevant factors including environmental, economic, and technical considerations and agency statutory missions.

(iii) Identify and discuss all such factors, including any essential considerations of national policy that were balanced by the Army in making its decision. Because economic and technical analyses are balanced with environmental analysis, the agency preferred alternative will not necessarily be the environmentally preferred alternative.

(iv) Discuss how those considerations entered into the final decision.

(v) State whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why they were not.

(vi) Identify or incorporate by reference the mitigation measures that were incorporated into the decision.

(2) Implementation of the decision may begin immediately after approval of the ROD.

(3) The proponent will prepare an NOA to be published in the FR by the HQDA proponent, following congressional notification. Processing and approval of the NOA is the same as for an NOI.

(4) RODs will be distributed to agencies with authority or oversight over aspects of the proposal, cooperating agencies, appropriate congressional, state, and district offices, all parties that are directly affected, and others upon request.

(5) One electronic copy of the ROD will be forwarded to ODEP.

(6) A monitoring and enforcement program will be adopted and summarized for any mitigation (see Appendix C of this part).

(k) *Pre-decision referrals.* 40 CFR part 1504 specifies procedures to resolve federal agency disagreements on the

environmental effects of a proposed action. Pre-decision referrals apply to interagency disagreement on a proposed action's potential unsatisfactory effects.

(l) *Changes during preparation.* If there are substantial changes in the proposed action, or significant new information relevant to environmental concerns during the proposed action's planning process, the proponent will prepare revisions or a supplement to any environmental document or prepare new documentation as necessary.

(m) *Mitigation.* All measures planned to minimize or mitigate expected significant environmental impacts will be identified in the EIS and the ROD. Implementation of the mitigation plan is the responsibility of the proponent (see Appendix C of this part). The proponent will make available to the public, upon request, the status and results of mitigation measures associated with the proposed action. For weapon system acquisition programs, the proponent will coordinate with the appropriate responsible parties before identifying potential mitigations in the EIS/ROD.

(n) *Implementing the decision.* The proponent will provide for monitoring to assure that decisions are carried out, particularly in controversial cases or environmentally sensitive areas (Appendix C of this part). Mitigation and other conditions that have been identified in the EIS, or during its review and comment period, and made part of the decision (and ROD), will be implemented by the lead agency or other appropriate consenting agency. The proponent will:

(1) Include appropriate conditions in grants, permits, or other approvals.

(2) Ensure that the proponent's project budget includes provisions for mitigations.

(3) Upon request, inform cooperating or commenting agencies on the progress in carrying out adopted mitigation measures that they have proposed and that were adopted by the agency making the decision.

(4) Upon request, make the results of relevant monitoring available to the public and Congress.

(5) Make results of relevant monitoring available to citizens advisory groups, and others that expressed such interest during the EIS process.

§ 651.46 Existing EISs.

A newly proposed action must be the subject of a separate EIS. The proponent may extract and revise the existing environmental documents in such a way as to bring them completely up to date, in light of the new proposals. Such a revised EIS will be prepared and processed entirely under the provisions of this part. If an EIS of another agency is adopted, it must be processed in accordance with 40 CFR 1506.3. Figures 4 through 8 to Subpart F of part 651 follow:

BILLING CODE 3710–01–P

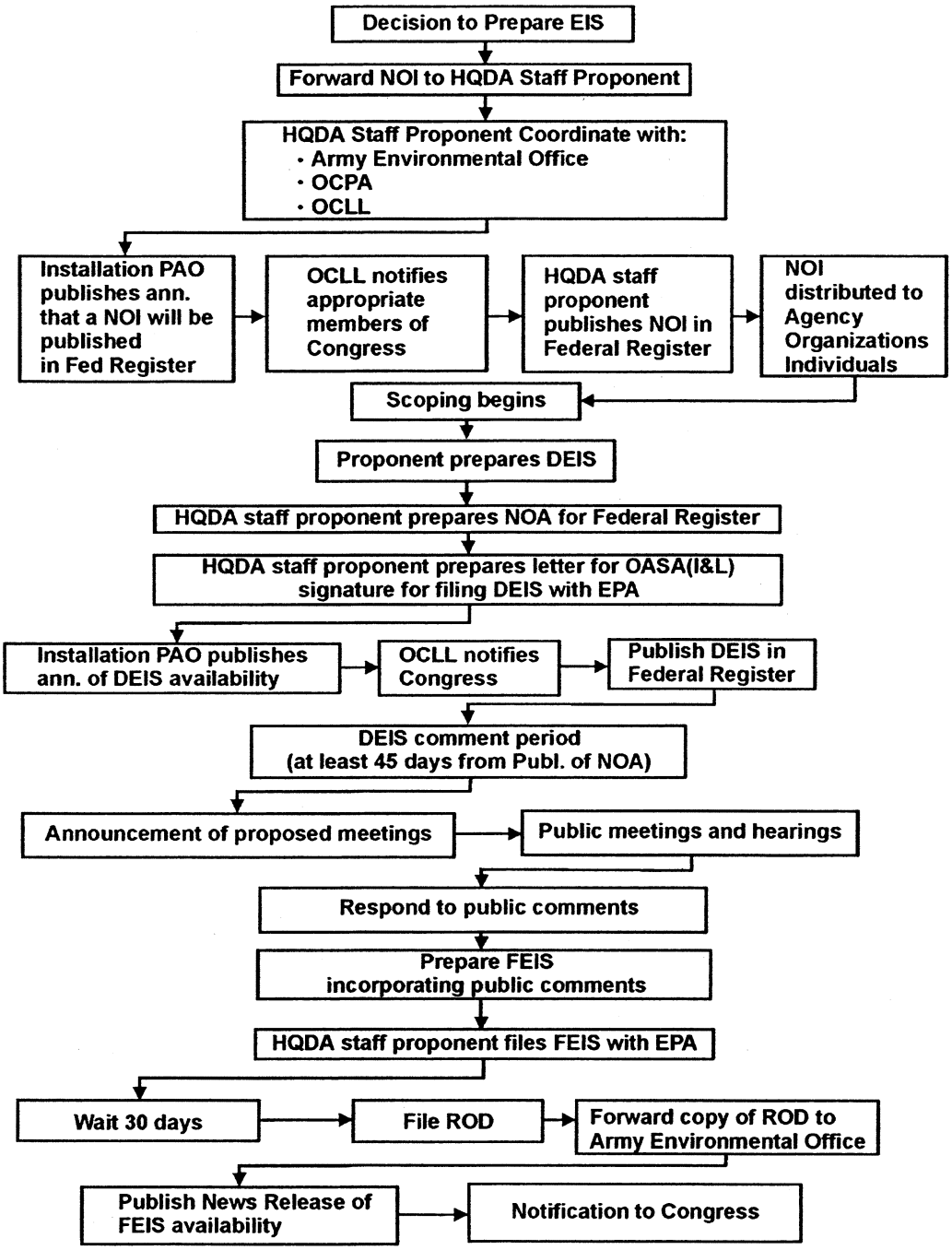

Figure 4. Steps in preparing and processing an environmental impact statement.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

January 14, 1999

Director
Office of the Federal Register
National Archives and Records
Administration
Washington, D. C. 20408

Dear Sir:

The enclosed notice of intent (NOI) to prepare an Environmental Impact Statement for the Fort Sill Real Property Master Plan is submitted for publication in the Notice section of the Federal Register.

Please publish this NOI in the earliest possible edition of the Federal Register. This notice is required for the Department of the Army to perform its military mission and to comply with the National Environmental Policy Act and the President's Council on Environmental Quality regulations.

To confirm publication date of this notice or for further information, please contact Mr. Greg Brewer at (703) 692-9220.

Please bill this to charge code 3710-08-M.

Sincerely,

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I,L&E)

Enclosure

Figure 5. Sample Notice of Intent Transmittal Letter.

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent to Prepare a Programmatic Environmental Impact Statement for the Real Property Master Plan, Fort Sill, Okla.

AGENCY: Department of the Army, DOD

ACTION: Notice of Intent

SUMMARY: This announced the intention of the U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Okla., to prepare an Environmental Impact Statement (EIS) in support of revisions to the installations' Real Property Master Plan (RPMP). The purpose is to evaluate the environmental impacts associated with the RPMP's implementation.

ADDRESSES: Written comments may be forwarded to the U.S. Army Corps of Engineers, ATTN: CESWT-PE-E (J. Randolph), P.O. Box 61, Tulsa, Okla. 74121-0061.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Kerr, Directorate of Environmental Quality, U.S. Army Field Artillery Center and Fort Sill, at (580) 442-3409.

SUPPLEMENTARY INFORMATION: The Fort Sill RPMP has the potential to significantly impact certain natural, economic, social, and cultural resources of the Fort Sill community. The study area for environmental analysis will be the entire Fort Sill installation. The objective is to provide a comprehensive and programmatic EIS that will serve as a planning tool, a public information source, and a reference for mitigation tracking.

Alternatives may consist of alternative locations for specific projects, partial implementation of the specific project, or other modifications of the specific project. The alternatives will be developed during preparation of the Draft EIS (DEIS) as a result of pubic input and of environmental analysis of the proposals within the plan.

SIGNIFICANT ISSUES: The Fort Sill reservation contains approximately 94,221 acres of land. Some of this land serves as potential habitat for protected species of wildlife. Of the areas within the installation that have been surveyed to date for cultural resources, 832 properties have been identified and recorded. Nearly all of the current and proposed RPMP projects are sited with the 6,015 acre cantonment area, where the majority of the installation's historic buildings are located.

The significant issues the EIS will analyze will include the following:

1. Development of a large deployment marshaling area near an existing railhead facility; Whereby, new railroad tracks, loading docks, switching facilities, hardstand areas, and fencing would be developed.

2. Redesignation of land use: Whereby, land use zoning would be redesignated to provide for the construction of new and expansion of existing motor pool areas.

3. Probably construction projects: Whereby, the following projects would be complete: (1) new multiple launch rocket system (MLRS) range firing points in the training areas; (2) a liquid fuel facility; (3) a unit movements facility; and (4) a contingency warehouse.

Public scoping meetings will be held in the vicinity of Fort Sill to facilitate input to the EIS process by citizens and organizations. The date and time of these meetings will be announced in general media and will be at times and locations convenient to the public. To be considered in the Draft EIS, comments and suggestions should be received no later than 15 days following the public scoping meeting.

DATED: January 14, 1999

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Figure 6. Sample of Notice of Intent.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

March 25, 1999

Director
Office of Federal Activities
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D. C. 20044

Dear Sir:

Enclosed are five copies of the Draft Environmental Impact Statement for the Disposal and Reuse of the Military Ocean Terminal, Bayonne, New Jersey.

These copies are forwarded for filing in accordance with the President's Council on Environmental Quality regulations for implementing the provisions of the national Environmental Policy Act (40 CFR, Parts 1500-1508).

The point of contact for this action is Ms. Theresa Persick-Arnold at (703) 697-0216.

Sincerely,

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Enclosures

Figure 7. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Environmental Protection Agency.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

March 25, 1999

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE (ENVIRONMENTAL SECURITY)

SUBJECT: Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of the Military Ocean Terminal, Bayonne (MOTBY), New Jersey

In accordance with Department of Defense Instruction 4715.9, Environmental Planning and Analysis, enclosed is a copy of the NOA of the DEIS on the disposal and reuse of MOTBY.

Point of contact for this action is Ms. Theresa Persick-Arnold at 697-0216.

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Enclosure

Figure 8. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Office of the Secretary of Defense

BILLING CODE 3710–01–C

Subpart G—Public Involvement and the Scoping Process

§ 651.47 Public involvement.

(a) As a matter of Army policy, public involvement is required for all EISs, and is strongly encouraged for all Army actions, including EAs. The requirement (40 CFR 1506.6) for public involvement recognizes that all potentially interested or affected parties will be involved, when practicable, whenever analyzing environmental considerations. This requirement can be met at the very beginning of the process by developing a plan to include all affected parties and implementing the plan with appropriate adjustments as it proceeds (AR 360–5). The plan will include the following:

(1) Information dissemination to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. The dissemination of this information will be based on the needs and desires of the local communities.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, tribal, and federal government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above. These two-way channels will be dynamic in nature, and should be updated regularly to reflect the needs of the local community.

(4) Public affairs officers at all levels will be kept informed.

(b) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(c) Proponents will invite public involvement in the review and comment of EAs and draft FNSIs (40 CFR 1506.6).

(d) Persons and agencies to be consulted include the following:

(1) Municipal, township, and county elected and appointed officials.

(2) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(3) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(4) Members of existing citizen advisory groups, such as Restoration Advisory Boards and Citizen Advisory Commissions.

(5) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization, such as farmers and ranchers, homeowners, small business owners, minority communities and disadvantaged communities, and tribal governments in accordance with White House Memorandum on Government to Government Relations with Native American Tribal Governments (April 29, 1994).

(6) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Izaak Walton League, Sierra Club, and the Audubon Society).

(7) Any person or group that has specifically requested involvement in the specific action or similar actions.

(e) The public involvement processes and procedures through which participation may be solicited include the following:

(1) Direct individual contact. Such interaction can identify persons and their opinions and initial positions, affecting the scope of issues that the EIS must address. Such limited contact may satisfy public involvement requirements when the expected significance and controversy of environmental effects is very limited.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(4) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(f) The meetings described in paragraph (e) of this section should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent, as described in paragraph (e) of this section.

(g) Public surveys or polls may be performed to identify public opinion of a proposed action, as appropriate (AR 335–15).

§ 651.48 Scoping process.

(a) The scoping process (40 CFR 1501.7) is intended to aid in determining the scope of the analyses and significant issues related to the proposed action. The process requires appropriate public participation immediately following publication of the NOI in the FR. It is important to note that scoping is not synonymous with a public meeting. The Army policy is that EISs for legislative proposals significantly affecting the environment will go through scoping unless extenuating circumstances make it impractical. In some cases, the scoping process may be useful in the preparation of EAs and should be employed when it is useful.

(b) The scoping process identifies relevant issues related to a proposed action through the involvement of all potentially interested or affected parties (affected federal, state, and local agencies; recognized Indian tribes; interest groups, and other interested persons) in the environmental analysis and documentation. This process should:

(1) Eliminate issues from detailed consideration which are not significant, or which have been covered by prior environmental review; and

(2) Make the analysis and documentation more efficient by providing focus to the effort. Proper scoping identifies reasonable alternatives and the information needed for their evaluation, thereby increasing public confidence in the Army decisionmaking process.

(c) Proper scoping will reduce both costs and time required for an EA or EIS. This is done through the documentation of all potential impacts and the focus of detailed consideration on those aspects of the action which are potentially significant or controversial. To assist in this process the Army will use the Environmental Impact Computer System (EICS) starting in Fiscal Year (FY) 04, as appropriate. This system will serve to structure all three stages of the scoping process (§ 651.49, 651.50, and 651.51) and provide focus on those actions that are important and of interest to the public. While these discussions focus on EIS preparation and documents to support that process, the three phases also apply if scoping is used for an EA. If used in the preparation of an EA, scoping, and documents to support that process, can be modified and adopted to ensure efficient public iteration and input to the decision-making process.

(d) When the planning for a project or action indicates the need for an EIS, the proponent initiates the scoping process to identify the range of actions, alternatives, and impacts for consideration in the EIS (40 CFR 1508.25). The extent of the scoping process (including public involvement) will depend upon:

(1) The size and type of the proposed action.

(2) Whether the proposed action is of regional or national interest.

(3) Degree of any associated environmental controversy.

(4) Importance of the affected environmental parameters.

(5) Significance of any effects on them.

(6) Extent of prior environmental review.

(7) Involvement of any substantive time limits.

(8) Requirements by other laws for environmental review.

(e) The proponent may incorporate scoping in the public involvement (or environmental review) process of other requirements, such as an EA. In such cases, the extent of incorporation is at the discretion of the proponent, working with the affected Army organization or installation. Such integration is encouraged.

(f) Scoping procedures fall into preliminary, public interaction, and final phases. These phases are discussed in § 651.49, § 651.50, and § 651.51, respectively.

§ 651.49 Preliminary phase.

In the preliminary phase, the proponent agency or office identifies, as early as possible, how it will accomplish scoping and with whose involvement. Key points will be identified or briefly summarized by the proponent, as appropriate, in the NOI, which will:

(a) Identify the significant issues to be analyzed in the EIS.

(b) Identify the office or person responsible for matters related to the

scoping process. If they are not the same as the proponent of the action, that distinction will be made.

(c) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5 and 1501.6).

(d) Identify the method by which the agency will invite participation of affected parties, and identify a tentative list of the affected parties to be notified. A key part of this preliminary identification is to solicit input regarding other parties who would be interested in the proposed project or affected by it.

(e) Identify the proposed method for accomplishing the scoping procedure.

(f) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decisionmaking schedule including:

(1) The scoping process itself.

(2) Collection or analysis of environmental data, including required studies.

(3) Preparation of draft and final EISs (DEISs and FEISs), and associated review periods.

(4) Filing of the ROD.

(5) Taking the action.

(6) For a programmatic EIS, preparation of a general expected schedule for future specific implementing (tiered) actions that will involve separate environmental analysis.

(g) If applicable, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

§ 651.50 Public interaction phase.

(a) During this portion of the process, the proponent will invite comments from all affected parties and respondents to the NOI to assist in developing issues for detailed discussion in the EIS. Assistance in identifying possible participants is available from the ODEP.

(b) In addition to the affected parties identified in paragraph (a) of this section, participants should include the following:

(1) Technical representatives of the proponent. Such persons must be able to describe the technical aspects of the proposed action and alternatives to other participants.

(2) One or more representatives of any Army-contracted consulting firm, if one has been retained to participate in writing the EIS or providing reports that the Army will use to create substantial portions of the EIS.

(3) Experts in various environmental disciplines, in any technical area where foreseen impacts are not already represented among the other scoping participants.

(c) In all cases, the participants will be provided with information developed during the preliminary phase and with as much of the following information that may be available:

(1) A brief description of the environment at the affected location. When descriptions for a specific location are not available, general descriptions of the probable environmental effects will be provided. This will also address the extent to which the environment has been modified or affected in the past.

(2) A description of the proposed alternatives. The description will be sufficiently detailed to enable evaluation of the range of impacts that may be caused by the proposed action and alternatives. The amount of detail that is sufficient will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be familiar.

(3) A tentative identification of ''any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration'' (40 CFR 1501.7(a)(5)).

(4) Any additional scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(d) The public involvement should begin with the NOI to publish an EIS. The NOI may indicate when and where a scoping meeting will take place and who to contact to receive preliminary information. The scoping meeting is an informal public meeting, and initiates a continuous scoping process, allowing the Army to scope the action and the impacts of alternatives. It is a working session where the gathering and evaluation of information relating to potential environmental impacts can be initiated.

(e) Starting with this information (paragraph (d) of this section), the person conducting the scoping process will use input from any of the involved or affected parties. This will aid in developing the conclusions. The proponent determines the final scope of the EIS. If the proponent chooses not to require detailed treatment of significant issues or factors in the EIS, in spite of relevant technical or scientific objections by any participant, the proponent will clearly identify (in the environmental consequences section of the EIS) the criteria that were used to eliminate such factors.

§ 651.51 The final phase.

(a) The initial scope of the DEIS is determined by the proponent during and after the public interaction phase of the process. Detailed analysis should focus on significant issues (40 CFR 1501.7(a)(2)). To determine the appropriate scope, the proponent must consider three categories of actions, alternatives, and impacts.

(1) The three categories of actions (other than unconnected single actions) are as follows:

(i) Connected actions are those that are closely related and should be discussed in the same impact statement. Actions are connected if they automatically trigger other actions that may require EISs, cannot or will not proceed unless other actions are previously or simultaneously taken, are interdependent parts of a larger action, and depend on the larger action for their justification.

(ii) Cumulative actions are those that, when viewed with other past and proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.

(iii) Similar actions are those that have similarities which provide a basis for evaluating their environmental consequences together, such as common timing or geography, and may be analyzed in the EIS. Agencies should do so when the best way to assess such actions is to treat them in a single EIS.

(2) The three categories of alternatives are as follows:

(i) No action.

(ii) Other reasonable courses of action.

(iii) Mitigation measures (not in the proposed action).

(3) The three categories of impacts are as follows:

(i) Direct.

(ii) Indirect.

(iii) Cumulative.

(4) The proponent can also identify any public EAs and EISs, prepared by the Army or another federal agency, related to, but not part of, the EIS under consideration (40 CFR 1501.7(a)(5)). Assignments for the preparation of the EIS among the lead and any cooperating agencies can be identified, with the lead agency retaining responsibility for the statement (40 CFR 1501.7(a)(4)); along with the identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS (40 CFR 1501.7(a)(6)).

(b) The identification and elimination of issues that are insignificant, non-controversial, or covered by prior environmental review can narrow the

analysis to remaining issues and their significance through reference to their coverage elsewhere (40 CFR 1501.7(a)(3)).

(c) As part of the scoping process, the lead agency may:

(1) Set time limits, as provided in § 651.14(b), if they were not already indicated in the preliminary phase.

(2) Prescribe overall page limits for the EIS in accordance with the CEQ regulations that emphasize conciseness.

(d) All determinations reached by the proponent during the scoping process will be clearly conveyed to the preparers of the EIS in a Scope of Statement. The Scope of Statement will be made available to participants in the scoping process and to other interested parties upon request. Any scientific or technical conflicts that arise between the proponent and scoping participants, cooperating agencies, other federal agencies, or preparers will be identified during the scoping process and resolved or discussed by the proponent in the DEIS.

§ 651.52 Aids to information gathering.

The proponent may use or develop graphic or other innovative methods to aid information gathering, presentation, and transfer during the three scoping phases. These include methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and organizing determinations on scope for use during preparation of the DEIS. The use of the World Wide Web (WWW) for these purposes is encouraged. Suggested uses include the implementation of a continuous scoping process, facilitating ''virtual'' public participation, as well as the dissemination of analyses and information as they evolve.

§ 651.53 Modifications of the scoping process.

(a) If a lengthy period exists between a decision to prepare an EIS and the time of preparation, the proponent will initiate the NOI at a reasonable time in advance of preparation of the DEIS. The NOI will state any tentative conclusions regarding the scope of the EIS made prior to publication of the NOI. Reasonable time for public participation will be allowed before the proponent makes any final decisions or commitments on the EIS.

(b) The proponent of a proposed action may use scoping during preparation of environmental review documents other than an EIS, if desired. In such cases, the proponent may use these procedures or may develop modified procedures, as needed.

Subpart H—Environmental Effects of Major Army Action Abroad

§ 651.54 Introduction.

(a) Protection of the environment is an Army priority, no matter where the Army actions are undertaken. The Army is committed to pursuing an active role in addressing environmental quality issues in Army relations with neighboring communities and assuring that consideration of the environment is an integral part of all decisions. This section assigns responsibilities for review of environmental effects abroad of major Army actions, as required by Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979, 3 CFR, 1979 Comp.,p.356. This section applies to HQDA and Army agencies' actions that would significantly affect the quality of the human environment outside the United States.

(b) Executive Order 12114 and DODD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions (planned currently to be replaced by a DODI, Analyzing Defense Actions With the Potential for Significant Impacts Outside the United States) provide guidance for analyzing the environmental impacts of Army actions abroad and in the global commons. Army components will, consistent with diplomatic factors (including applicable Status of Forces Agreements (SOFAs) and stationing agreements), national security considerations, and difficulties of obtaining information, document the review of potential environmental impacts of Army actions abroad and in the global commons as set forth in DODD 6050.7 (or DODI upon publication). The analysis and documentation of potential environmental impacts of Army actions abroad and in the global commons should, to the maximum extent possible, be incorporated into existing decision-making processes; planning for military exercises, training plans, and military operations.

§ 651.55 Categorical exclusions.

The list of CXs in Appendix B of this part may be used in reviewing potential environmental impacts of major actions abroad and in the global commons, in accordance with DODD 6050.7 (or DODI upon publication) and Executive Order 12114, section 2–5(c).

§ 651.56 Responsibilities.

(a) The ASA(I&E) will:

(1) Serve as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintain liaison with the DUSD(IE) on matters concerning Executive Order 12114, DODD 6050.7, and this part.

(3) Coordinate actions with other Secretariat offices as appropriate.

(b) The DEP will:

(1) Serve as ARSTAF proponent for implementation of Executive Order 12114, DODD 6050.7, and this part.

(2) Apply this part when planning and executing overseas actions, where appropriate in light of applicable statutes and SOFAs.

(c) The DCSOPS will:

(1) Serve as the focal point on the ARSTAF for integrating environmental considerations required by Executive Order 12114 into Army plans and activities. Emphasis will be placed on those actions reasonably expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consult with the Office of Foreign Military Rights Affairs of the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) on significant or sensitive actions affecting relations with another nation.

(d) TJAG, in coordination with the OGC, will provide advice and assistance concerning the requirements of Executive Order 12114 and DODD 6050.7.

(e) The Chief of Public Affairs will provide advice and assistance on public affairs as necessary.

Appendix A to Part 651–References

Military publications and forms are accessible from a variety of sources through the use of electronic media or paper products. In most cases, electronic publications and forms that are associated with military organizations can be accessed at various address or web sites on the Internet. Since electronic addresses can frequently change, or similar web links can also be modified at several locations on the Internet, it's advisable to access those sites using a search engine that is most accommodative, yet beneficial to the user. Additionally, in an effort to facilitate the public right to information, certain publications can also be purchased through the National Technical Information Service (NTIS). Persons interested in obtaining certain types of publications can write to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Section I—Required Publications

AR 360–5

Army Public Affairs, Public Information.

Section II—Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this part.

AR 5–10

Reduction and Realignment Actions.

AR 11–27

Army Energy Program.

AR 95–50

Airspace and Special Military Operation Requirements.

AR 140–475

Real Estate Selection and Acquisition: Procedures and Criteria.

AR 200–1

Environmental Protection and Enhancement.

AR 200–3

Natural Resources—Land, Forest, and Wildlife Management.

AR 200–4

Cultural Resources Management.

AR 210–10

Administration.

AR 210–20

Master Planning for Army Installations.

AR 335–15

Management Information Control System.

AR 380–5

Department of the Army Information Security Program.

AR 385–10

Army Safety Program.

AR 530–1

Operations Security (OPSEC).

DA PAM 70–3

Army Acquisition Procedures.

Defense Acquisition Deskbook

An electronic knowledge presentation system available through the Deputy Under Secretary of Defense (Acquisition Reform) and the Office of the Under Secretary of Defense (Acquisition and Technology).

DOD 5000.2–R

Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems.

DODD 4100.15

Commercial Activities Program.

DODD 4700.4

Natural Resources Management Program, Integrated Natural Resources Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP).

DODD 6050.7

Environmental Effects Abroad of Major Department of Defense Actions.

DODI 4715.9

Environmental Planning and Analysis

Executive Order 11988

Floodplain Management, 3 CFR, 1977 Comp., p. 117

Executive Order 11990

Protection of Wetlands, 3 CFR, 1977 Comp., p. 121.

Executive Order 12114

Environmental Effects Abroad of Major Federal Actions, 3 CFR, 1979 comp., p. 356.

Executive Order 12778

Civil Justice Reform, 3 CFR, 1991 Comp., p. 359.

Executive Order 12856

Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, 3 CFR, 1993 Comp., p. 616.

Executive Order 12861

Elimination of One-Half of Executive Branch Internal Regulations, 3 CFR, 1993 Comp., p. 630.

Executive Order 12866

Regulatory Planning and Review, 3 CFR, 1993 Comp., p. 638.

Executive Order 12898

Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, 3 CFR, 1994 Comp., p. 859.

Executive Order 13007

Indian Sacred Sites, 3 CFR, 1996 Comp., p. 196.

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR, 1997 Comp., p. 198.

Executive Order 13061

Federal Support of Community Efforts Along American Heritage Rivers, 3 CFR, 1997 Comp., p. 221.

Executive Order 13083

Federalism, 3 CFR, 1998 Comp., p. 146.

Public Laws: American Indian Religious Freedom Act.

42 U.S.C. 1996.

Clean Air Act

As amended (42 U.S.C. 7401, *et seq.*).

Clean Water Act of 1977

Public Law 95–217, 91 Stat. 1566 and Public Law 96–148, Sec. 1(a)–(c), 93 Stat. 1088.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

As amended (CERCLA, Superfund) (42 U.S.C. 9601 *et seq.*) Endangered Species Act of 1973.

Public Law 93–205, 87 Stat. 884.

Fish and Wildlife Coordination Act

Public Law 85–624, Sec. 2, 72 Stat. 563 and Public Law 89–72, Sec. 6(b), 79 Stat. 216.

National Environmental Policy Act of 1969

Public Law 91–190, 83 Stat. 852.

National Historic Preservation Act

Public Law 89–665, 80 Stat. 915.

Native American Graves Protection and Repatriation Act

Public Law 101–601, 104 Stat. 3048.

Pollution Prevention Act of 1990

Public Law 101–508, Title VI, Subtitle G, 104 Stat. 13880–321.

Resource Conservation and Recovery Act of 1976

Public Law 94–580, 90 Stat. 2795.

Sikes Act

Public Law 86–797, 74 Stat. 1052.

Note. The following CFRs may be found in your legal office or law library. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20401.

36 CFR Part 800

Advisory Council on Historic Preservation.

40 CFR Parts 1500—1508

Council on Environmental Quality.

Section III—Prescribed Forms

This section contains no entries.

Section IV—Referenced Forms

DA Form 2028

Recommended Changes to Publications and Blank Forms.

DD Form 1391

Military Construction Project Data.

Appendix B to Part 651—Categorical Exclusions

Section I—Screening Criteria

Before any CXs can be used, Screening Criteria as referenced in § 651.29 must be met.

Section II—List of CXs

(a) For convenience only, the CXs are grouped under common types of activities (for example, administration/ operation, construction/demolition, and repair and maintenance). Certain CXs require a REC, which will be completed and signed by the proponent. Concurrence on the use of a CX is required from the appropriate environmental officer (EO), and that signature is required on the REC. The list of CXs is subject to continual review and modification. Requests for additions or changes to the CXs (along with justification) should be sent, through channels, to the ASA (I&E). Subordinate Army headquarters may not modify the CX list through supplements to this part. Proposed modifications to the list of CXs will be published in the FR by HQDA, to provide opportunity for public comment.

(b) Administration/operation activities:

(1) Routine law and order activities performed by military/military police and physical plant protection and security personnel, and civilian natural resources and environmental law officers.

(2) Emergency or disaster assistance provided to federal, state, or local entities (REC required).

(3) Preparation of regulations, procedures, manuals, and other guidance documents that implement, without substantive change, the applicable HQDA or other federal agency regulations, procedures, manuals, and other guidance documents that have been environmentally evaluated (subject to previous NEPA review).

(4) Proposed activities and operations to be conducted in an existing non-historic structure which are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharged to the environment, will not result in substantially different waste discharges from current or previous activities, and emissions will

remain within established permit limits, if any (REC required).

(5) Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

(6) Routinely conducted recreation and welfare activities not involving off-road recreational vehicles.

(7) Deployment of military units on a temporary duty (TDY) or training basis where existing facilities are used for their intended purposes consistent with the scope and size of existing mission.

(8) Preparation of administrative or personnel-related studies, reports, or investigations.

(9) Approval of asbestos or lead-based paint management plans drafted in accordance with applicable laws and regulations (REC required).

(10) Non-construction activities in support of other agencies/organizations involving community participation projects and law enforcement activities.

(11) Ceremonies, funerals, and concerts. This includes events such as state funerals, to include flyovers.

(12) Reductions and realignments of civilian and/or military personnel that: fall below the thresholds for reportable actions as prescribed by statute (10 U.S.C. 2687) and do not involve related activities such as construction, renovation, or demolition activities that would otherwise require an EA or an EIS to implement (REC required). This includes reorganizations and reassignments with no changes in force structure, unit redesignations, and routine administrative reorganizations and consolidations (REC required).

(13) Actions affecting Army property that fall under another federal agency's list of categorical exclusions when the other federal agency is the lead agency (decision maker), or joint actions on another federal agency's property that fall under that agency's list of categorical exclusions (REC required).

(14) Relocation of personnel into existing federally-owned (or state-owned in the case of ARNG) or commercially-leased space, which does not involve a substantial change in the supporting infrastructure (for example, an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase is an example of substantial change) (REC required).

(c) Construction and demolition:

(1) Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste (REC required).

(2) Demolition of non-historic buildings, structures, or other improvements and disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazard items (REC required).

(3) Road or trail construction and repair on existing rights-of-ways or on previously disturbed areas.

(d) Cultural and natural resource management activities:

(1) Land regeneration activities using only native trees and vegetation, including site preparation. This does not include forestry operations (REC required).

(2) Routine maintenance of streams and ditches or other rainwater conveyance structures (in accordance with USACE permit authority under Section 404 of the Clean Water Act and applicable state and local permits), and erosion control and stormwater control structures (REC required).

(3) Implementation of hunting and fishing policies or regulations that are consistent with state and local regulations.

(4) Studies, data collection, monitoring and information gathering that do not involve major surface disturbance. Examples include topographic surveys, bird counts, wetland mapping, and other resources inventories (REC required).

(5) Maintenance of archaeological, historical, and endangered/threatened species avoidance markers, fencing, and signs.

(e) Procurement and contract activities:

(1) Routine procurement of goods and services (complying with applicable procedures for sustainable or ''green'' procurement) to support operations and infrastructure, including routine utility services and contracts.

(2) Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing right-of-way, easement, distribution systems, and/or facilities (REC required).

(3) Conversion of commercial activities under the provisions of AR 5–20. This includes only those actions that do not change the actions or the missions of the organization or alter the existing land-use patterns.

(4) Modification, product improvement, or configuration engineering design change to materiel, structure, or item that does not change the original impact of the materiel, structure, or item on the environment (REC required).

(5) Procurement, testing, use, and/or conversion of a commercially available product (for example, forklift, generator, chain saw, etc.) which does not meet the definition of a weapon system (Title 10, U.S.C., Section 2403. ''Major weapon systems: Contractor guarantees''), and does not result in any unusual disposal requirements.

(6) Acquisition or contracting for spares and spare parts, consistent with the approved Technical Data Package (TDP).

(7) Modification and adaptation of commercially available items and products for military application (for example, sportsman's products and wear such as holsters, shotguns, sidearms, protective shields, etc.), as long as modifications do not alter the normal impact to the environment (REC required).

(8) Adaptation of non-lethal munitions and restraints from law enforcement suppliers and industry (such as rubber bullets, stun grenades, smoke bombs, etc.) for military police and crowd control activities where there is no change from the original product design and there are no unusual disposal requirements. The development and use by the military of non-lethal munitions and restraints which are similar to those used by local police forces and in which there are no unusual disposal requirements (REC required).

(f) Real estate activities:

(1) Grants or acquisitions of leases, licenses, easements, and permits for use of real property or facilities in which there is no significant change in land or facility use. Examples include, but are not limited to, Army controlled property and Army leases of civilian property to include leases of training, administrative, general use, special purpose, or warehouse space (REC required).

(2) Disposal of excess easement areas to the underlying fee owner (REC required).

(3) Transfer of real property administrative control within the Army, to another military department, or to other federal agency, including the return of public domain lands to the Department of Interior, and reporting of property as excess and surplus to the GSA for disposal (REC required).

(4) Transfer of active installation utilities to a commercial or governmental utility provider, except for those systems on property that has been declared excess and proposed for disposal (REC required).

(5) Acquisition of real property (including facilities) where the land use will not change substantially or where the land acquired will not exceed 40 acres and the use will be similar to current or ongoing Army activities on adjacent land (REC required).

(6) Disposal of real property (including facilities) by the Army where the reasonably foreseeable use will not change significantly (REC required).

(g) Repair and maintenance activities:

(1) Routine repair and maintenance of buildings, airfields, grounds, equipment, and other facilities. Examples include, but are not limited to: Removal and disposal of asbestos-containing material (for example, roof material and floor tile) or lead-based paint in accordance with applicable regulations; removal of dead, diseased, or damaged trees; and repair of roofs, doors, windows, or fixtures (REC required for removal and disposal of asbestos-containing material and lead-based paint or work on historic structures).

(2) Routine repairs and maintenance of roads, trails, and firebreaks. Examples include, but are not limited to: grading and clearing the roadside of brush with or without the use of herbicides; resurfacing a road to its original conditions; pruning vegetation, removal of dead, diseased, or damaged trees and cleaning culverts; and minor soil stabilization activities.

(3) Routine repair and maintenance of equipment and vehicles (for example, autos, tractors, lawn equipment, military vehicles, etc.) which is substantially the same as that routinely performed by private sector owners and operators of similar equipment and vehicles. This does not include depot maintenance of unique military equipment.

(h) Hazardous materials/hazardous waste management and operations:

(1) Use of gauging devices, analytical instruments, and other devices containing sealed radiological sources; use of industrial radiography; use of radioactive material in medical and veterinary practices; possession of radioactive material incident to performing services such as installation, maintenance, leak tests, and calibration; use of uranium as shielding material in containers or devices; and radioactive tracers (REC required).

(2) Immediate responses in accordance with emergency response plans (for example, Spill Prevention Control and Countermeasure Plan (SPCCP)/Installation Spill Contingency Plan (ISCP), and Chemical Accident and Incident Response Plan) for release or discharge of oil or hazardous materials/substances; or emergency actions taken by Explosive Ordnance Demolition (EOD) detachment or Technical Escort Unit.

(3) Sampling, surveying, well drilling and installation, analytical testing, site preparation, and intrusive testing to determine if hazardous wastes, contaminants, pollutants, or special hazards (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance) are present (REC required).

(4) Routine management, to include transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, radiological and special hazards (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance), and/or hazardous waste that complies with EPA, Army, or other regulatory agency requirements. This CX is not applicable to new construction of facilities for such management purposes.

(5) Research, testing, and operations conducted at existing enclosed facilities consistent with previously established safety levels and in compliance with applicable federal, state, and local standards. For facilities without existing NEPA analysis, including contractor-operated facilities, if the operation will substantially increase the extent of potential environmental impacts or is controversial, an EA (and possibly an EIS) is required.

(6) Reutilization, marketing, distribution, donation, and resale of items, equipment, or materiel; normal transfer of items to the Defense Logistics Agency. Items, equipment, or materiel that have been contaminated with hazardous materials or wastes will be adequately cleaned and will conform to the applicable regulatory agency's requirements.

(i) Training and testing:

(1) Simulated war games (classroom setting) and on-post tactical and logistical exercises involving units of battalion size or smaller, and where tracked vehicles will not be used (REC required to demonstrate coordination with installation range control and environmental office).

(2) Training entirely of an administrative or classroom nature.

(3) Intermittent on-post training activities (or off-post training covered by an ARNG land use agreement) that involve no live fire or vehicles off established roads or trails. Uses include, but are not limited to, land navigation, physical training, Federal Aviation Administration (FAA) approved aerial overflights, and small unit level training.

(j) Aircraft and airfield activities:

(1) Infrequent, temporary (less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate (REC required).

(2) Flying activities in compliance with Federal Aviation Administration Regulations and in accordance with normal flight patterns and elevations for that facility, where the flight patterns/elevations have been addressed in an installation master plan or other planning document that has been subject to NEPA public review.

(3) Installation, repair, or upgrade of airfield equipment (for example, runway visual range equipment, visual approach slope indicators).

(4) Army participation in established air shows sponsored or conducted by non-Army entities on other than Army property.

Appendix C to Part 651—Mitigation and Monitoring

(a) The CEQ regulations (40 CFR parts 1500–1508) recognize the following five means of mitigating an environmental impact. These five approaches to mitigation are presented in order of desirability.

(1) Avoiding the impact altogether by not taking a certain action or parts of an action. This method avoids environmental impact by eliminating certain activities in certain areas. As an example, the Army's Integrated Training Area Management (ITAM) program accounts for training requirements and activities while considering natural and cultural resource conditions on ranges and training land. This program allows informed management decisions associated with the use of these lands, and has mitigated potential impacts by limiting activities to areas that are compatible with Army training needs. Sensitive habitats and other resources are thus protected, while the mission requirements are still met.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. Limiting the degree or magnitude of the action can reduce the extent of an impact. For example, changing the firing time or the number of rounds fired on artillery ranges will reduce the noise impact on nearby residents. Using the previous ITAM example, the conditions of ranges can be monitored, and, when the conditions on the land warrant, the intensity or magnitude of the training on that parcel can be modified through a variety of decisions.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the effect on the environment. This method restores the environment to its previous condition or better. Movement of troops and vehicles across vegetated areas often destroys vegetation. Either reseeding or replanting the areas with native plants after the exercise can mitigate this impact.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. This method designs the action so as to reduce adverse environmental effects. Examples include maintaining erosion control structures, using air pollution control devices, and encouraging car pools in order to reduce transportation effects such as air pollution, energy consumption, and traffic congestion.

(5) Compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20). This method replaces the resource or environment that will be impacted by the action. Replacement can occur in-kind or otherwise; for example, deer habitat in the project area can be replaced with deer habitat in another area; an in-kind replacement at a different location. This replacement can occur either on the impact site or at another location. This type of mitigation is often used in water resources projects.

(b) The identification and evaluation of mitigations involves the use of experts familiar with the predicted environmental impacts. Many potential sources of information are available for assistance. These include sources within the Army such as the USACHPPM, the USAEC, the MACOM environmental office, the ODEP, COE research laboratories, COE districts and divisions, and DoD Regional Support Centers. State agencies are another potential source of information, and the appropriate POC within these agencies may be obtained from the installation environmental office. Local interest groups may also be able to help identify potential mitigation measures. Other suggested sources of assistance include:

(1) Aesthetics:

(i) Installation Landscape Architect.

(ii) COE District Landscape Architects.

(2) Air Quality:

(i) Installation Environmental Specialist.

(ii) Installation Preventive Medicine Officer.

(3) Airspace:

(i) Installation Air Traffic and Airspace Officers.

(ii) DA Regional Representative to the FAA.

(iii) DA Aeronautical Services.

(iv) Military Airspace Management System Office.

(v) Installation Range Control Officer.

(4) Earth Science:

(i) Installation Environmental Specialist.

(ii) USACE District Geotechnical Staff.

(5) Ecology:

(i) Installation Environmental Specialist.

(ii) Installation Wildlife Officer.

(iii) Installation Forester.

(iv) Installation Natural Resource Committee.

(v) USACE District Environmental Staff.

(6) Energy/Resource Conservation: Installation Environmental Specialist.

(7) Health and Safety:

(i) Installation Preventive Medicine Officer.

(ii) Installation Safety Officer.

(iii) Installation Hospital.

(iv) Installation Mental Hygiene or Psychiatry Officer.

(v) Chaplain's Office.

(8) Historic/Archaeological Resources:

(i) Installation Environmental Specialist.

(ii) Installation Historian or Architect.

(iii) USACE District Archaeologist.

(9) Land Use Impacts: (i) Installation Master Planner.

(ii) USACE District Community Planners.
(10) Socioeconomics:
(i) Personnel Office.
(ii) Public Information Officer.
(iii) USACE District Economic Planning Staff.
(11) Water Quality:
(i) Installation Environmental Specialist.
(ii) Installation Preventive Medicine Officer.
(iii) USACE District Environmental Staff.
(12) Noise:
(i) Preventive Medicine Officer.
(ii) Directorate of Public Works.
(iii) Installation Master Planner.
(13) Training Impacts:
Installation Director of Plans, Training, and Mobilization

(c) Several different mitigation techniques have been used on military installations for a number of years. The following examples illustrate the variety of possible measures:

(1) There are maneuver restrictions in areas used extensively for tracked vehicle training. These restrictions are not designed to infringe on the military mission, but rather to reduce the amount of damage to the training area.

(2) Aerial seeding has been done on some installations to reduce erosion problems.

(3) Changing the time and/or frequency of operations has been used. This may involve changing the season of the year, the time of day, or even day of the week for various activities. These changes avoid noise impacts as well as aesthetic, transportation, and some ecological problems.

(4) Reducing the effects of construction has involved using techniques that keep heavy equipment away from protected trees and quickly re-seeding areas after construction.

(d) Monitoring and enforcement programs are applicable (40 CFR 1505.2(c)) and the specific adopted action is an important case (40 CFR 1505.3) if:

(1) There is a change in environmental conditions or project activities that were assumed in the EIS, such that original predictions of the extent of adverse environmental impacts may be too limited.

(2) The outcome of the mitigation measure is uncertain, such as in the case of the application of new technology.

(3) Major environmental controversy remains associated with the selected alternative.

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to federal-or state-listed endangered or threatened species; important historic or archaeological sites that are either on, or meet eligibility requirements for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. Evaluation and determination of what constitutes serious harm must be made in coordination with the appropriate federal, state, or local agency responsible for each particular program.

(e) Five basic considerations affect the establishment of monitoring programs:

(1) *Legal requirements.* Permits for some actions will require that a monitoring system be established (for example, dredge and fill permits from the USACE). These permits will generally require both enforcement and effectiveness monitoring programs.

(2) *Protected resources.* These include federal-or state-listed endangered or threatened species, important historic or archaeological sites (whether or not these are listed or eligible for listing on the National Register of Historic Places), wilderness areas, wild and scenic rivers, and other public or private protected resources. Private protected resources include areas such as Audubon Society Refuges, Nature Conservancy lands, or any other land that would be protected by law if it were under government ownership, but is privately owned. If any of these resources are affected, an effectiveness and enforcement-monitoring program must be undertaken in conjunction with the federal, state, or local agency that manages the type of resource.

(3) *Major environmental controversy.* If a controversy remains regarding the effect of an action or the effectiveness of a mitigation, an enforcement and effectiveness monitoring program must be undertaken. Controversy includes not only scientific disagreement about the mitigation's effectiveness, but also public interest or debate.

(4) *Mitigation outcome.* The probability of the mitigation's success must be carefully considered. The proponent must know if the mitigation has been successful elsewhere. The validity of the outcome should be confirmed by expert opinion. However, the proponent should note that a certain technique, such as artificial seeding with the natural vegetation, which may have worked successfully in one area, may not work in another.

(5) *Changed conditions.* The final consideration is whether any condition, such as the environmental setting, has changed (for example, a change in local land use around the area, or a change in project activities, such as increased amount of acreage being used or an increased movement of troops). Such changes will require preparation of a supplemental document (see §§ 651.5(g) and 651.24) and additional monitoring. If none of these conditions are met (that is, requirement by law, protected resources, no major controversy is involved, effectiveness of the mitigation is known, and the environmental or project conditions have not changed), then only an enforcement monitoring program is needed. Otherwise, both an enforcement and effectiveness monitoring program will be required.

(f) Enforcement monitoring program. The development of an enforcement monitoring program is governed by who will actually perform the mitigation; a contractor, a cooperating agency, or an in-house (Army) lead agency. The lead agency is ultimately responsible for performing any mitigation activities.

(1) *Contract performance.* Several provisions must be made in work to be performed by contract. The lead agency must ensure that contract provisions include the performance of the mitigation activity and that penalty clauses are written into the contracts. It must provide for timely inspection of the mitigation measures and is responsible for enforcing all contract provision.

(2) *Cooperating agency performance.* The lead agency must ensure that, if a cooperating agency performs the work, it understands its role in the mitigation. The lead agency must determine and agree upon how the mitigation measures will be funded. It must also ensure that any necessary formal paperwork such as cooperating agreements is complete.

(3) *Lead agency performance.* If the lead agency performs the mitigation, the proponent must ensure that needed tasks are performed, provide appropriate funding in the project budget, arrange for necessary manpower allocations, and make any necessary changes in the agency (installation) regulations (such as environmental or range regulations).

(g) Effectiveness monitoring. Effectiveness monitoring is often difficult to establish. The first step is to determine what must be monitored, based on criteria discussed during the establishment of the system; for example, the legal requirements, protected resources, area of controversy, known effectiveness, or changed conditions. Initially, this can be a very broad statement, such as reduction of impacts on a particular stream by a combination of replanting, erosion control devices, and range regulations. The next step is finding the expertise necessary to establish the monitoring system. The expertise may be available on-post or may be obtained from an outside source. After a source of expertise is located, the program can be established using the following criteria:

(1) Any technical parameters used must be measurable; for example, the monitoring program must be quantitative and statistically sound.

(2) A baseline study must be completed before the monitoring begins in order to identify the actual state of the system prior to any disturbance.

(3) The monitoring system must have a control, so that it can isolate the effects of the mitigation procedures from effects originating outside the action.

(4) The system's parameters and means of measuring them must be replicable.

(5) Parameter results must be available in a timely manner so that the decision maker can take any necessary corrective action before the effects are irreversible.

(6) Not every mitigation has to be monitored separately. The effectiveness of several mitigation actions can be determined by one measurable parameter. For example, the turbidity measurement from a stream can include the combined effectiveness of mitigation actions such as reseeding, maneuver restrictions, and erosion control devices. However, if a method combines several parameters and a critical change is noted, each mitigation measurement must be examined to determine the problem.

Appendix D to Part 651—Public Participation Plan

The objective of the plan will be to encourage the full and open discussion of issues related to Army actions. Some NEPA actions will be very limited in scope, and may not require full public participation and involvement. Other NEPA actions will obviously be of interest, not only to the local

community, but to others across the country as well.

(a) To accomplish this objective, the plan will require:

(1) Dissemination of information to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters. Such information may be subject to Freedom of Information Act and operations security review.

(2) The invitation of public comments through two-way communication channels that will be kept open through various means.

(3) The use of fully informed public affairs officers at all levels.

(4) Preparation of EAs which incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(5) Consultation of persons and agencies such as:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service) or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Native Americans.

(v) Members and officials of those identifiable interest groups of local or national scope that may have an interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(b) Public involvement should be solicited using the following processes and procedures:

(1) Direct individual contact. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of a very limited scope. This contact should identify:

(i) Persons expected to express an opinion and later participate.

(ii) Preliminary positions of such persons on the scope of issues that the analysis must address.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues, inviting the public to express views on the proposed courses of action. Public suggestions or additional alternative courses of action may be expressed at these gatherings which need not be formal public hearings.

(4) Any other processes and procedures to accomplish the appropriate level of public involvement.

(c) Scoping Guidance. All affected parties must be included in the scoping process (AR 360–5). The plan must include the following:

(1) Information disseminated to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. Such information may be subject to Freedom of Information Act and operations security review.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, and federal government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above.

(4) Public affairs officers at all levels will be kept informed.

(5) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(6) Preparation of EAs will incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(7) Persons and agencies to be consulted include the following:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action, (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Indian tribes.

(v) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(8) The public involvement processes and procedures by which participation may be solicited include the following:

(i) The direct individual contact process identifies persons expected to express an opinion and participate in later public meetings. Direct contact may also identify the preliminary positions of such persons on the scope of issues that the EIS will address. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of very limited scope.

(ii) Small workshops or discussion groups.

(iii) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(iv) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(9) The meetings described above should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent of (a) of this appendix.

(10) Public surveys or polls to identify public opinion of a proposed action will be performed (AR 335–15, chapter 10).

(d) Preparing the Notice of Intent. In preparing the NOI, the proponent will:

(1) In the NOI, identify the significant issues to be analyzed in the EIS.

(2) In the NOI, identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, make that distinction.

(3) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5 and 1501.6).

(4) Identify the method by which the agency will invite participation of affected parties; and identify a tentative list of the affected parties to be notified.

(5) Identify the proposed method for accomplishing the scoping procedure.

(6) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decision-making schedule including:

(i) The scoping process itself.

(ii) Collecting or analyzing environmental data, including studies required of cooperating agencies.

(iii) Preparation of DEISs and FEISs.

(iv) Filing of the ROD.

(v) Taking the action.

(7) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions that will involve separate environmental analysis.

(8) If applicable, in the NOI, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

Appendix E to Part 651—Content of the Environmental Impact Statement

(a) EISs will:

(1) Be analytic rather than encyclopedic. Impacts will be discussed in proportion to their significance; and insignificant impacts will only be briefly discussed, sufficient to show why more analysis is not warranted.

(2) Be kept concise and no longer than absolutely necessary to comply with NEPA, CEQ regulations, and this part. Length should

be determined by potential environmental issues, not project size. The EIS should be no longer than 300 pages.

(3) Describe the criteria for selecting alternatives, and discuss those alternatives, including the ''no action'' alternative, to be considered by the ultimate decision maker.

(4) Serve as a means to assess environmental impacts of proposed military actions, rather than justifying decisions.

(b) The EIS will consist of the following:

(1) *Cover sheet.* The cover sheet will not exceed one page (40 CFR 1502.11) and will be accompanied by a signature page for the proponent, designated as preparer; the installation environmental office (or other source of NEPA expertise), designated as reviewer; and the Installation Commander (or other Activity Commander), designated as approver. It will include:

(i) The following statement: ''The material contained in the attached (final or draft) EIS is for internal coordination use only and may not be released to non-Department of Defense agencies or individuals until coordination has been completed and the material has been cleared for public release by appropriate authority.'' This sheet will be removed prior to filing the document with the EPA.

(ii) A list of responsible agencies including the lead agency and any cooperating agency.

(iii) The title of the proposed action that is the subject of the statement and, if appropriate, the titles of related cooperating agency actions, together with state and county (or other jurisdiction as applicable) where the action is located.

(iv) The name, address, and telephone number of the person at the agency who can supply further information, and, as appropriate, the name and title of the major approval authority in the command channel through HQDA staff proponent.

(v) A designation of the statement as a draft, final, or draft or final supplement.

(vi) A one-paragraph abstract of the statement that describes only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

(vii) The date by which comments must be received, computed in cooperation with the EPA.

(2) *Summary.* The summary will stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. The summary presentation will focus on the scope of the EIS, including issues that will not be evaluated in detail. It should list all federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other federal environmental protection laws will be included (40 CFR 1502.25). To simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with the narrative. The EIS summary should be written at the standard middle school reading level. This summary should not exceed 15 pages. An additional summary document will be prepared for separate submission to the DEP and the ASA(I&E). This will identify progress ''to the date,'' in addition to the standard EIS summary which:

(i) Summarizes the content of the document (from an oversight perspective).

(ii) Outlines mitigation requirements (to improve mitigation tracking and the programming of funds).

(iii) Identifies major and unresolved issues and potential controversies. For EIS actions that have been delegated by the ASA(I&E), this document will also include status of requirements and conditions established by the delegation letter.

(3) *Table of contents.* This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

(4) *Purpose of and need for the action.* This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section will briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives. This section is designed specifically to call attention to the benefits of the proposed action. If a cost-benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here.

(5) *Alternatives considered, including proposed action and no action alternative.* This section presents all reasonable alternatives and their likely environmental impacts, written in simple, nontechnical language for the lay reader. A no action alternative must be included (40 CFR 1502.14(d)). A preferred alternative need not be identified in the DEIS; although a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)). The environmental impacts of the alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decision maker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of graphics and tabular or matrix format is encouraged to provide the reviewer with an at-a-glance review. In summary, the following points are required:

(i) A description of all reasonable alternatives, including the preferred action, alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the no action alternative.

(ii) A comparative presentation of the environmental consequences of all reasonable alternative actions, including the preferred alternative.

(iii) A description of the mitigation measures and/or monitoring procedures (§ 651.15) nominated for incorporation into the proposed action and alternatives, as well as mitigation measures that are available but not incorporated and/or monitoring procedures (§ 651.15).

(iv) Listing of any alternatives that were eliminated from detailed study. A brief discussion of the reasons for which each alternative was eliminated.

(6) *Affected environment (baseline conditions) that may be impacted.* This section will contain information about existing conditions in the affected areas in sufficient detail to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Affected elements could include, for example, biophysical characteristics (ecology and water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for points covered will be related to the significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form, or referenced.

(7) *Environmental and socioeconomic consequences.* This section forms the scientific and analytic basis for the comparison of impacts. It should discuss:

(i) Direct effects and their significance.

(ii) Indirect effects and their significance.

(iii) Possible conflicts between the proposed action and existing land use plans, policies, and controls.

(iv) Environmental effects of the alternatives, including the proposed action and the no action alternative.

(v) Energy requirements and conservation potential of various alternatives and mitigation measures.

(vi) Irreversible and irretrievable commitments of resources associated with the proposed action.

(vii) Relationship between short-term use of the environment and maintenance and enhancement of long-term productivity.

(viii) Urban quality, historic, and cultural resources, and design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(ix) Cumulative effects of the proposed action in light of other past, present, and foreseeable actions.

(x) Means to mitigate or monitor adverse environmental impacts.

(xi) Any probable adverse environmental effects that cannot be avoided.

(8) *List of preparers.* The EIS will list the names of its preparers, together with their qualifications (expertise, experience, and professional disciplines) (40 CFR 1502.17), including those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, and basic components of the statement. When possible, the people who are responsible for a particular analysis, as well as an analysis of background papers, will be identified. If some or all of the preparers are contractors' employees, they must be identified as such. Identification of the firm that prepared the EIS is not, by itself, adequate to meet the requirements of this point. Normally, this list will not exceed two pages. Contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. These statements will be referenced in this section of the EIS.

(9) *Distribution list.* For the DEIS, a list will be prepared indicating from whom review and comment is requested. The list will include public agencies and private parties or

organizations. The distribution of the DEIS and FEIS will include the CBTDEVs from whom comments were requested, irrespective of whether they provided comments.

(10) *Index.* The index will be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

(11) *Appendices (as appropriate).* If an agency prepares an appendix to an EIS, the appendix will consist of material prepared in connection with an EIS (distinct from material not so prepared and incorporated by reference), consist only of material that substantiates any analysis fundamental to an impact statement, be analytic and relevant to the decision to be made, and be circulated with the EIS or readily available.

Appendix F to Part 651—Glossary

Section 1—Abbreviations

AAE
Army Acquisition Executive.

AAPPSO
Army Acquisition Pollution Prevention Support Office.

ACAT
Acquisition Category.

ACSIM
Assistant Chief of Staff for Installation Management.

ADNL
A-weighted day-night levels.

AQCR
Air Quality Control Region.

AR
Army Regulation.

ARNG
Army National Guard.

ARSTAF
Army Staff.

ASA(AL&T)
Assistant Secretary of the Army (Acquisition, Logistics, and Technology).

ASA(FM)
Assistant Secretary of the Army for Financial Management.

ASA(I&E)
Assistant Secretary of the Army (Installations and Environment).

ASD(ISA)
Assistant Secretary of Defense (International Security Affairs).

CARD
Cost Analysis Requirements Description.

CBTDEV
Combat Developer.

CEQ
Council on Environmental Quality.

CERCLA
Comprehensive Environmental Response Compensation and Liability Act.

CDNL
C-Weighted Day-Night Levels.

CFR
Code of Federal Regulations.

CONUS
Continental United States.

CX
Categorical Exclusion.

DA
Department of the Army.

DAD
Defense Acquisition Deskbook.

DASA(ESOH)
Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

DCSLOG
Deputy Chief of Staff for Logistics.

DCSOPS
Deputy Chief of Staff for Operations and Plans.

DEIS
Draft Environmental Impact Statement.

DEP
Director of Environmental Programs.

DOD
Department of Defense.

DOPAA
Description of Proposed Action and Alternatives.

DSA
Deputy for System Acquisition.

DTIC
Defense Technical Information Center.

DTLOMS
Doctrine, Training, Leader Development, Organization, Materiel, and Soldier.

DUSD(IE)
Deputy Under Secretary of Defense for Installations and Environment.

EA
Environmental Assessment.

EBS
Environmental Baseline Studies.

EC
Environmental Coordinator.

ECAP
Environmental Compliance Achievement Program.

ECAS
Environmental Compliance Assessment System.

EE/CA
Engineering Evaluation/Cost Analysis.

EICS
Environmental Impact Computer System.

EIFS
Economic Impact Forecast System.

EIS
Environmental Impact Statement.

EJ
Environmental Justice.

EOD
Explosive Ordnance Demolition.

EPA
Environmental Protection Agency.

EPR
Environmental Program Requirements.

EQCC
Environmental Quality Control Committee.

ESH
Environment, Safety, and Health.

FAA
Federal Aviation Administration.

FEIS
Final Environmental Impact Statement.

FNSI
Finding of No Significant Impact.

FR
Federal Register.

FS
Feasibility Study.

FTP
Full-Time Permanent.

GC
General Counsel.

GOCO
Government-Owned, Contractor-Operated.

GSA
General Services Administration.

HQDA
Headquarters, Department of the Army.

ICRMP
Integrated Cultural Resources Management Plan.

ICT
Integrated Concept Team.

INRMP
Integrated Natural Resources Management Plan.

IPT
Integrated Process Team.

ISCP
Installation Spill Contingency Plan.

ISR
Installation Status Report.

ITAM
Integrated Training Area Management.

LCED
Life Cycle Environmental Documentation.

MACOM
Major Army Command.

MATDEV
Materiel Developer.

MDA
Milestone Decision Authority.

MFA
Materiel Fielding Agreement.

MFP

Materiel Fielding Plan.

MILCON

Military Construction.

MNS

Mission Needs Statement.

MOA

Memorandum of Agreement.

MOU

Memorandum of Understanding.

NAGPRA

Native American Graves Protection and Repatriation Act.

NEPA

National Environmental Policy Act.

NGB

National Guard Bureau.

NHPA

National Historic Preservation Act.

NOA

Notice of Availability.

NOI

Notice of Intent.

NPR

National Performance Review.

NRC

Nuclear Regulatory Commission.

NWR

Notice of Availability of Weekly Receipts (EPA).

OASD(PA)

Office of the Assistant Secretary of Defense for Public Affairs.

OCLL

Office of the Chief of Legislative Liaison.

OCPA

Office of the Chief of Public Affairs.

ODEP

Office of the Director of Environmental Programs.

OFS

Officer Foundation Standards.

OGC

Office of General Counsel.

OIPT

Overarching Integrated Process Team.

OMA

Operations and Maintenance Army.

OMANG

Operations and Maintenance Army National Guard.

OMAR

Operations and Maintenance Army Reserve.

OOTW

Operations Other Than War.

OPSEC

Operations Security.

ORD

Operating Requirements Document.

OSD

Office of the Secretary of Defense.

OSG

Office of the Surgeon General.

PAO

Public Affairs Officer.

PCB

Polychlorinated Biphenyls.

PDEIS

Preliminary Draft Environmental Impact Statement.

PEO

Program Executive Officer.

PM

Program Manager.

POC

Point of Contact.

POL

Petroleum, Oils, and Lubricants.

PPBES

Program Planning and Budget Execution System.

RCRA

Resource Conservation and Recovery Act.

RDT&E

Research, Development, Test, and Evaluation.

REC

Record of Environmental Consideration.

ROD

Record of Decision.

RONA

Record of Non-Applicability.

RSC

Regional Support Command.

S&T

Science and Technology.

SA

Secretary of the Army.

SARA

Superfund Amendments and Reauthorization Act.

SASO

Stability and Support Operations.

SOFA

Status of Forces Agreement.

SPCCP

Spill Prevention Control and Countermeasure Plan.

TDP

Technical Data Package.

TDY

Temporary Duty.

TEMP

Test and Evaluation Master Plan.

TJAG

The Judge Advocate General.

TOE

Table of Organization Equipment.

TRADOC

U.S. Army Training and Doctrine Command.

USACE

U.S. Army Corps of Engineers.

USACHPPM

U.S. Army Center for Health Promotion and Preventive Medicine.

USAEC

U.S. Army Environmental Center.

U.S.C.

United States Code.

Section II—Terms

Categorical Exclusion

A category of actions that do not require an EA or an EIS because Department of the Army (DA) has determined that the actions do not have an individual or cumulative impact on the environment.

Environmental (or National Environmental Policy Act) Analysis

This term, as used in this part, will include all documentation necessary to coordinate and staff analyses or present the results of the analyses to the public or decision maker.

Foreign Government

A government, regardless of recognition by the United States, political factions, and organizations, that exercises governmental power outside the United States.

Foreign Nations

Any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments. It also refers to any area under military occupation by the United States alone or jointly with any other foreign government. Includes any area that is the responsibility of an international organization of governments; also includes contiguous zones and fisheries zones of foreign nations.

Global Commons

Geographical areas outside the jurisdiction of any nation. They include the oceans outside territorial limits and Antarctica. They do not include contiguous zones and fisheries zones of foreign nations.

Headquarters, Department of the Army proponent

As the principal planner, implementer, and decision authority for a proposed action, the HQDA proponent is responsible for the substantive review of the environmental documentation and its thorough consideration in the decision-making process.

Major Federal Action

Reinforces, but does not have a meaning independent of, ''significantly affecting the environment,'' and will be interpreted in that context. A federal proposal with ''significant effects'' requires an EIS, whether it is ''major'' or not. Conversely, a ''major federal action'' without ''significant effects'' does not necessarily require an EIS.

Preparers

Personnel from a variety of disciplines who write environmental documentation in clear and analytical prose. They are primarily responsible for the accuracy of the document.

Proponent

Proponent identification depends on the nature and scope of a proposed action as follows:

(1) Any Army structure may be a proponent. For instance, the installation/activity Facility Engineer (FE)/Director of Public Works becomes the proponent of installation-wide Military Construction Army (MCA) and Operations and Maintenance (O&M) Activity; Commanding General, TRADOC becomes the proponent of a change in initial entry training; and the Program Manager becomes the proponent for a major acquisition program. The proponent may or may not be the preparer.

(2) In general, the proponent is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action. The proponent has the responsibility to prepare and/or secure funding for preparation of the environmental documentation.

Significantly Affecting the Environment

The significance of an action's, program's, or project's effects must be evaluated in light of its context and intensity, as defined in 40 CFR 1508.27.

Section III—Special Abbreviations and Terms

This part uses the following abbreviations, brevity codes or acronyms not contained in AR 310–50. These include use for electronic publishing media and computer terminology, as follows:

WWW World Wide Web.

[FR Doc. 02–192 Filed 3–28–02; 8:45 am]

BILLING CODE 3710–08–P

Federal Register

Friday,
March 29, 2002

Part II

Department of Defense

Department of the Army

32 CFR Part 651

Environmental Analysis of Army Actions; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

[Army Regulation 200–2]

Environmental Analysis of Army Actions

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This final rule is a revision of policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) regulations in the Code of Federal Regulations (CFR). These guidelines replace policy and procedures found in current Army Regulation 200–2, Environmental Effects of Army Actions. The revision is necessary to clarify and update the current regulation. Since the December 1988 update of this part, initiatives such as the National Performance Review (NPR) have streamlined the federal government through decentralization, reduction and simplification of regulations, and management of risk. This revised rule strives to meet the spirit of the NPR, and Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations, 11 September 1993.

EFFECTIVE DATE: March 29, 2002.

ADDRESSES: Army Environmental Policy Institute, 101 Marietta Street, Suite 3120, Atlanta, GA 30303–2716.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Webster, Army Environmental Policy Institute at (404) 524–9364 x298.

SUPPLEMENTARY INFORMATION:

a. Background

Proposed revisions to Army Regulation 200–2 (32 CFR part 651) were published in the **Federal Register**, Volume 65, No.174, Part II, pages 54347–54392, September 7, 2000 for public comment.

b. Comments and Responses

Two respondents submitted comments on the proposed rule. The first respondent was concerned that all Environmental Assessments (EAs) might not be made available for public participation and comment, or published in the **Federal Register**. It is Army policy that all EAs of national scope or interest be published in the **Federal Register**, and that all EAs and draft Findings of No Significant Impact (FNSIs) be made available through local publication and public notice. This part provides for such publication of a ''draft FNSI'' for public comment, after which the FNSI is either finalized, the EA is modified, or the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) is published. This same respondent was concerned over the potential effects that Army application of Commercial Activities (OMB Cir. A–76) would have on the ability of Army leaders to ''maintain sufficient capability'' to ensure compliance as required by Section 651.5(e) of the proposed revision. Army application of Commercial Activities includes identification of those employee functions that are ''government in nature'' (GIN), as defined in OMB guidelines. The correct application of those guidelines will satisfy the concerns voiced by the respondent. Similarly, the respondent was concerned over the replacement of career civil servants with military personnel in responsible NEPA oversight and approval positions. This revision clearly places the responsibility for an adequately trained NEPA staff on the Army leadership (§§ 651.4 (a)(2), (c)(1)(v), (e)(1), (f)(4), (g)(8), (o)(12), (r)(1), and (r)(2)), and subsequent oversight of the overall NEPA program performance (§§ 651.4 (a), (f)(6) and (o)(1)). With respect to the respondent's concerns over military (as opposed to civilian) control over NEPA requirements, this revision adds NEPA requirements to the Army Officer Foundation Standards (§ 651.4 (r)(1)).

The second respondent felt that the rule would not insure that impacts to a state's fish and wildlife resources are considered and addressed early in the Army NEPA planning process, and recommended that a REC require documentation of potential impacts to wildlife or wildlife habitat. This issue is addressed in §§ 651.29 (a)(2), (c)(1) and (3), and (e)(1) and (4). The respondent believed that Sections §§ 651.36 (b) and 651.39 of the proposed rule contradict § 651.36 (c) and CEQ Regulation 40 CFR § 1506.6 (a). The cited sections of this proposed rule are not contradictory. Instead, they require open public access and encourage participation, as necessary, to insure that public concerns and issues are incorporated in Army decision making. As an example, § 651.21 of this rule allows for the circulation of a ''draft'' FNSI which is only ''finalized'' after opportunities for pubic involvement have been afforded. Some discretion on the timing and nature of public involvement is afforded, in § 651.36 (b), to the proponents of an action, sufficient participation is required under this rule to insure required public cognizance and the opportunity for more extensive levels of participation, at the discretion of the affected public. The second respondent also expressed concern over the applicability and desirability of CX (c) (1) (in Appendix B), which excludes areas of less than 5 acres of disturbance, if the location of the proposed action is a wetland or habitat area. This CX remains in this final rule, as a proposed action that affects wetlands, sensitive habitat, or other special circumstances, the CX would be prohibited under § 651.29. Noted conflicts on the maximum length of an EIS, between § 651.40 and Appendix E (a) (3), has been resolved in this final rule. Finally this respondent called for a definition of ''Significantly Affecting the Environment'' which is more consistent with CEQ Regulation 40 CFR 1508.27, and this change has been made in this final rule.

c. Administrative Requirements

The Regulatory Flexibility Act

The Regulatory Flexibility Act, 5, U.S.C. 601 *et seq.*, requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organization must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an action, however, need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

The Department of the Army has considered the impact of this part under the Regulatory Flexibility Act. It has been certified that the final rule will not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act

This part does not involve the collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. This organization has determined that this rule has no

federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights

This rule is issued with respect to the National Environmental Policy Act of 1969 and therefore establishes the Army's responsibilities for the early integration of environmental consideration into planning and decision-making. This rule should not impact the provisions of Executive Order 12630 or the Private Property Rights Act.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The revision is not a ''major'' rule within the meaning of Executive Order 12866. The effect on the economy will be less than $100 million. The rule will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies. The rule will not have a significant adverse impact on competition, employment, investment productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12875 Enhancing the Intergovernmental Partnership

The rule does not impose non-statutory unfunded mandates on small governments and is not subject to the requirements of the executive order.

Executive Order 12988, Civil Justice

This rule is in compliance with the provisions and requirements of Executive Order 12988.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The rule is issued with respect to existing environmental guidelines and laws. Therefore, this rule should not directly impact this executive order.

Unfunded Mandates Act

This revision does not impose an enforceable duty upon the private sector nor does it impose unfunded mandates on small governments and therefore is not subject to the requirements of the Unfunded Mandates Reform Act.

National Environmental Policy Act

This part implements the National Environmental Policy Act of 1969 (NEPA), and establishes the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making.

Submission to Congress and the Comptroller General of the General Accounting Office

Pursuant to Section 801(a)(1)(A) of the Administrative Procedures Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army will submit a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedures Act, as amended.

List of Subjects in 32 CFR Part 651

Ecology, Environmental impact statements, Environmental protection, Natural resources.

Dated: December 6, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), DASA (ESOH).

For the reasons as set forth in the preamble, 32 CFR Part 651 is revised to read as follows:

PART 651—ENVIRONMENTAL ANALYSIS OF ARMY ACTIONS (AR 200–2)

Subpart A—Introduction

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651.2 References.
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651.4 Responsibilities.
651.5 Army policies.
651.6 NEPA analysis staffing.
651.7 Delegation of authority for non-acquisition systems.
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Subpart B—National Environmental Policy Act and the Decision Process

6511.9 Introduction.
651.10 Actions requiring environmental analysis.
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651.18 Introduction.
651.19 Record of Environmental Consideration.
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651.35 Decision process.
651.36 Public involvement.
651.37 Public availability.
651.38 Existing environmental assessments.
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Subpart F—Environmental Impact Statement

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651.41 Conditions requiring an EIS.
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651.43 Format of the EIS.
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651.55 Categorical exclusions.
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Appendix A to Part 651—References
Appendix B to Part 651—Categorical Exclusions
Appendix C to Part 651—Mitigation and Monitoring
Appendix D to Part 651—Public Participation Plan
Appendix E to Part 651—Content of the Environmental Impact Statement
Appendix F to Part 651—Glossary

Authority: 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508; E.O. 12114, 44 FR 1957, 3 CFR, 1979 Comp., p. 356.

Subpart A—Introduction

§ 651.1 Purpose.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA), setting forth the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making.

(b) This part requires environmental analysis of Army actions affecting human health and the environment; providing criteria and guidance on actions normally requiring Environmental Assessments (EAs) or Environmental Impact Statements (EISs), and listing Army actions that are categorically excluded from such requirements, provided specific criteria are met.

(c) This part supplements the regulations of the Council on Environmental Quality (CEQ) in the Code of Federal Regulations (CFR) (40 CFR parts 1500–1508) for Army actions, and must be read in conjunction with them.

(d) All Army acquisition programs must use this part in conjunction with Department of Defense (DOD) 5000.2–R (Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems).

(e) This part applies to actions of the Active Army and Army Reserve, to functions of the Army National Guard (ARNG) involving federal funding, and to functions for which the Army is the DOD executive agent. It does not apply to Civil Works functions of the US Army Corps of Engineers (USACE) or to combat or combat-related activities in a combat or hostile fire zone. Operations Other Than War (OOTW) or Stability and Support Operations (SASO) are subject to the provisions of this part as specified in Subpart H of this part. This part applies to relevant actions within the United States, which is defined as all States; the District of Columbia; territories and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef. This regulation also applies to actions in the Commonwealths of Puerto Rico and the Northern Marianas, the Republic of the Marshall Islands, and the Federated States of Micronesia and Palau (Republic of Belau). In addition, this part addresses the responsibility of the Army for the assessment and consideration of environmental effects for peacetime SASO operations worldwide. Throughout this part, emphasis is placed upon quality analysis of environmental effects, not the production of documents. Documentation is necessary to present and staff results of the analyses, but the objective of NEPA and Army NEPA policy is quality analysis in support of the Army decision maker. The term ''analysis'' also includes any required documentation to support the analysis, coordinate NEPA requirements, and inform the public and the decision maker.

§ 651.2 References.

Required and related publications and referenced forms are listed in Appendix A of this part.

§ 651.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this part are explained in the glossary in Appendix F of this part.

§ 651.4 Responsibilities.

(a) *The Assistant Secretary of the Army (Installations and Environment) (ASA(I&E)).* ASA(I&E) is designated by the Secretary of the Army (SA) as the Army's responsible official for NEPA policy, guidance, and oversight. In meeting these responsibilities, ASA(I&E) will:

(1) Maintain liaison with the Office of the Secretary of Defense (OSD), Office of Management and Budget (OMB), Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), Congressional oversight committees, and other federal, state, and local agencies on Army environmental policies.

(2) Review NEPA training at all levels of the Army, including curricula at Army, DOD, other service, other agency, and private institutions; and ensure adequacy of NEPA training of Army personnel at all levels.

(3) Establish an Army library for EAs and EISs, which will serve as:

(i) A means to ascertain adherence to the policies set forth in this part, as well as potential process improvements; and

(ii) A technical resource for proponents and preparers of NEPA documentation.

(b) The *Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(AL&T)).* ASA(AL&T) will:

(1) Under oversight of the ASA(I&E), execute those NEPA policy provisions contained herein that pertain to the ASA(AL&T) responsibilities in the Army materiel development process, as described in Army Regulation (AR) 70–1, Army Acquisition Policy.

(2) Prepare policy for the Army Acquisition Executive (AAE) to develop and administer a process of review and approval of environmental analyses during the Army materiel development process.

(3) Prepare research, development, test, and evaluation (RDT&E) and procurement budget justifications to support Materiel Developer (MATDEV) implementation of NEPA provisions.

(c) *The Army Acquisition Executive (AEE).* The AAE will, under the Army oversight responsibilities assigned to ASA(I&E):

(1) Administer a process to:

(i) Execute all those NEPA policy provisions contained herein that pertain to all acquisition category (ACAT) programs, projects, and products;

(ii) Ensure that Milestone Decision Authorities (MDAs), at all levels, assess the effectiveness of environmental analysis in all phases of the system acquisition process, including legal review of these requirements;

(iii) Establish resource requirements and program, plan, and budget exhibits for inclusion in annual budget decisions;

(iv) Review and approve NEPA documentation at appropriate times during materiel development, in conjunction with acquisition phases and milestone reviews as established in the Acquisition Strategy; and

(v) Establish NEPA responsibility and awareness training requirements for Army Acquisition Corps personnel.

(2) Ensure Program Executive Officers (PEOs), Deputies for Systems Acquisition (DSAs), and direct-reporting Program Managers (PMs) will:

(i) Supervise assigned programs, projects, and products to ensure that each environmental analysis addresses all applicable environmental laws, executive orders, and regulations.

(ii) Ensure that environmental considerations are integrated into system acquisition plans/strategies, Test and Evaluation Master Plans (TEMPs) and Materiel Fielding Plans, Demilitarization/Disposal Plans, system engineering reviews/Integrated Process Team (IPT) processes, and Overarching Integrated Process Team (OIPT) milestone review processes.

(iii) Coordinate environmental analysis with appropriate organizations to include environmental offices such as Army Acquisition Pollution Prevention Support Office (AAPPSO) and U.S. Army Environmental Center (USAEC) and operational offices and organizations such as testers (developmental/operational), producers, users, and disposal offices.

(3) Ensure Program, Project, Product Managers, and other MATDEVs will:

(i) Initiate the environmental analysis process prescribed herein upon receiving the project office charter to commence the materiel development process, and designate a NEPA point of contact (POC) to the Director of Environmental Programs (DEP).

(ii) Integrate the system's environmental analysis (including NEPA) into the system acquisition strategy, milestone review planning, system engineering, and preliminary design, critical design, and production readiness reviews.

(iii) Apply policies and procedures set forth in this part to programs and actions within their organizational and staff responsibility.

(iv) Coordinate with installation managers and incorporate comments and positions of others (such as the Assistant Chief of Staff for Installation Management (ACSIM) and environmental offices of the development or operational testers, producers, users, and disposers) into the decision-making process.

(v) Initiate the analysis of environmental considerations, assess the environmental consequences of proposed programs and projects, and undergo environmental analysis, as appropriate.

(vi) Maintain the administrative record of the program's environmental analysis in accordance with this part.

(vii) Coordinate with local citizens and other affected parties, and incorporate appropriate comments into NEPA analyses.

(viii) Coordinate with ASA(I&E) when NEPA analyses for actions under AAE purview require publication in the **Federal Register** (FR).

(d) *The Deputy Chief of Staff for Operations and Plans (DCSOPS).* DCSOPS is the proponent for Training and Operations activities. DCSOPS will ensure that Major Army Commands (MACOMs) support and/or perform, as appropriate, NEPA analysis of fielding issues related to specific local or regional concerns when reviewing Materiel Fielding Plans prepared by Combat Developers (CBTDEVs) or MATDEVs. This duty will include the coordination of CBTDEV and MATDEV information with appropriate MACOMs and Deputy Chief of Staff for Logistics (DCSLOG).

(e) *The Assistant Chief of Staff for Installation Management (ACSIM).* ACSIM is responsible for coordinating, monitoring, and evaluating NEPA activities within the Army. The Environmental Programs Directorate is the Army Staff (ARSTAF) POC for environmental matters and serves as the Army staff advocate for the Army NEPA requirements contained in this part. The ACSIM will:

(1) Encourage environmental responsibility and awareness among Army personnel to most effectively implement the spirit of NEPA.

(2) Establish and maintain the capability (personnel and other resources) to comply with the requirements of this part. This responsibility includes the provision of an adequately trained and educated staff to ensure adherence to the policies and procedures specified by this part.

(f) *The Director of Environmental Programs.* The director, with support of the U.S. Army Environmental Center, and under the ACSIM, will:

(1) Advise Army agencies in the preparation of NEPA analyses, upon request.

(2) Review, as requested, NEPA analyses submitted by the Army, other DOD components, and other federal agencies.

(3) Monitor proposed Army policy and program documents that have environmental implications to determine compliance with NEPA requirements and ensure integration of environmental considerations into decision-making and adaptive management processes.

(4) Propose and develop Army NEPA guidance pursuant to policies formulated by ASA(I&E).

(5) Advise project proponents regarding support and defense of Army NEPA requirements through the budgeting process.

(6) Provide NEPA process oversight, in support of ASA(I&E), and, as appropriate, technical review of NEPA documentation.

(7) Oversee proponent implementation and execution of NEPA requirements, and develop and execute programs and initiatives to address problem areas.

(8) Assist the ASA(I&E) in the evaluation of formal requests for the delegation of NEPA responsibilities on a case-by-case basis. This assistance will include:

(i) Determination of technical sufficiency of the description of proposed action and alternatives (DOPAA) when submitted as part of the formal delegation request (§ 651.7).

(ii) Coordination of the action with the MACOM requesting the delegation.

(9) Periodically provide ASA(I&E) with a summary analysis and recommendations on needed improvements in policy and guidance to Army activities concerning NEPA implementation, in support of ASA(I&E) oversight responsibilities.

(10) Advise headquarters proponents on how to secure funding and develop programmatic NEPA analyses to address actions that are Army-wide, where a programmatic approach would be appropriate to address the action.

(11) Designate a NEPA PM to coordinate the Army NEPA program and notify ASA(I&E) of the designation.

(12) Maintain manuals and guidance for NEPA analyses for major Army programs in hard copy and make this guidance available on the World Wide Web (WWW) and other electronic means.

(13) Maintain a record of NEPA POCs in the Army, as provided by the MACOMs and other Army agencies.

(14) Forward electronic copies of all EAs, and EISs to AEC to ensure inclusion in the Army NEPA library; and ensure those same documents are forwarded to the Defense Technical Information Center (DTIC).

(g) *Heads of Headquarters, Army agencies.* The heads of headquarters, Army agencies will:

(1) Apply policies and procedures herein to programs and actions within their staff responsibility except for state-funded operations of the Army National Guard (ARNG).

(2) Task the appropriate component with preparation of NEPA analyses and documentation.

(3) Initiate the preparation of necessary NEPA analyses, assess proposed programs and projects to determine their environmental consequences, and initiate NEPA documentation for circulation and review along with other planning or decision-making documents. These other documents include, as appropriate, completed DD Form 1391 (Military Construction Project Data), Case Study and Justification Folders, Acquisition Strategies, and other documents proposing or supporting proposed programs or projects.

(4) Coordinate appropriate NEPA analyses with ARSTAF agencies.

(5) Designate, record, and report to the DEP the identity of the agency's single POC for NEPA considerations.

(6) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(7) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the DEP.

(8) Maintain the capability (personnel and other resources) to comply with the requirements of this part and include

provisions for NEPA requirements through the Program Planning and Budget Execution System (PPBES) process.

(h) *The Assistant Secretary of the Army for Financial Management (ASA(FM)).* ASA(FM) will establish procedures to ensure that NEPA requirements are supported in annual authorization requests.

(i) *The Judge Advocate General (TJAG).* TJAG will provide legal advice to the Army Staff and assistance in NEPA interpretation, federal implementing regulations, and other applicable legal authority; determine the legal sufficiency for Army NEPA documentation; and interface with the Army General Counsel (GC) and the Department of Justice on NEPA-related litigation.

(j) *The Army General Counsel.* The Army General Counsel will provide legal advice to the Secretary of the Army on all environmental matters, to include interpretation and compliance with NEPA and federal implementing regulations and other applicable legal authority.

(k) *The Surgeon General.* The Surgeon General will provide technical expertise and guidance to NEPA proponents in the Army, as requested, in order to assess public health, industrial hygiene, and other health aspects of proposed programs and projects.

(l) *The Chief, Public Affairs.* The Chief, Public Affairs will:

(1) Provide guidance on issuing public announcements such as Findings of No Significant Impact (FNSIs), Notices of Intent (NOIs), scoping procedures, Notices of Availability (NOAs), and other public involvement activities; and establish Army procedures for issuing/announcing releases in the FR.

(2) Review and coordinate planned announcements on actions of national interest with appropriate ARSTAF elements and the Office of the Assistant Secretary of Defense for Public Affairs (OASD(PA)).

(3) Assist in the issuance of appropriate press releases to coincide with the publication of notices in the FR.

(4) Provide assistance to MACOM and installation Public Affairs Officers (PAOs) regarding the development and release of public involvement materials.

(m) *The Chief of Legislative Liaison.* The Chief of Legislative Liaison will notify Members of Congress of impending proposed actions of national concern or interest. The Chief will:

(1) Provide guidance to proponents at all levels on issuing Congressional notifications on actions of national concern or interest.

(2) Review planned congressional notifications on actions of national concern or interest.

(3) Prior to (and in concert with) the issuance of press releases and publications in the FR, assist in the issuance of congressional notifications on actions of national concern or interest.

(n) *Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander.* Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander will:

(1) Monitor proposed actions and programs within their commands to ensure compliance with this part, including mitigation monitoring, utilizing Environmental Compliance Assessment System (ECAS), Installation Status Report (ISR), or other mechanisms.

(2) Task the proponent of the proposed action with funding and preparation of NEPA documentation and involvement of the public.

(3) Ensure that any proponent at the MACOM level initiates the required environmental analysis early in the planning process, plans the preparation of necessary NEPA documentation, and uses the analysis to aid in the final decision.

(4) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(5) Maintain official record copies of all NEPA documentation for which they are the proponent, and file electronic copies of those EAs, and final EISs with AEC.

(6) Provide coordination with Headquarters, Department of the Army (HQDA) for proposed actions that have either significant impacts requiring an EIS or are of national interest. This process will require defining the purpose and need for the action, alternatives to be considered, and other information, as requested by HQDA. It also must occur early in the process and prior to an irretrievable commitment of resources that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). When delegated signature authority by HQDA, this process also includes the responsibility for complying with this part and associated Army environmental policy.

(7) Approve and forward NEPA documentation, as appropriate, for actions under their purview.

(8) In the case of the Director, ARNG, or his designee, approve all federal NEPA documentation prepared by all ARNG activities.

(9) Ensure environmental information received from MATDEVs is provided to appropriate field sites to support site-specific environmental analysis and NEPA requirements.

(10) Designate a NEPA PM to coordinate the MACOM NEPA program and maintain quality control of NEPA analyses and documentation that are processed through the command.

(11) Budget for resources to maintain oversight of NEPA and this part.

(o) *Installation Commanders; Commanders of U.S. Army Reserve Support Commands; and The Adjutant Generals of the Army National Guard.* Installation Commanders; Commanders of U.S. Army Reserve Support Commands; and The Adjutant Generals of the Army National Guard will:

(1) Establish an installation (command organization) NEPA program and evaluate its performance through the Environmental Quality Control Committee (EQCC) as required by AR 200–1, Environmental Protection and Enhancement.

(2) Designate a NEPA POC to coordinate and manage the installation's (command organization's) NEPA program, integrating it into all activities and programs at the installation. The installation commander will notify the MACOM of the designation.

(3) Establish a process that ensures coordination with the MACOM, other installation staff elements (to include PAOs and tenants) and others to incorporate NEPA requirements early in the planning of projects and activities.

(4) Ensure that actions subject to NEPA are coordinated with appropriate installation organizations responsible for such activities as master planning, natural and cultural resources management, or other installation activities and programs.

(5) Ensure that funding for environmental analysis is prioritized and planned, or otherwise arranged by the proponent, and that preparation of NEPA analyses, including the involvement of the public, is consistent with the requirements of this part.

(6) Approve NEPA analyses for actions under their purview. The Adjutant General will review and endorse documents and forward to the NGB for final approval.

(7) Ensure the proponent initiates the NEPA analysis of environmental consequences and assesses the environmental consequences of proposed programs and projects early in the planning process.

(8) Assist in the review of NEPA analyses affecting the installation or

activity, and those prepared by DOD and other Army or federal agencies, as requested.

(9) Provide information through the chain of command on proposed actions of national interest to higher headquarters prior to initiation of NEPA documentation.

(10) Maintain official record copies of all NEPA documentation for which they are the proponent and forward electronic copies of those final EISs and EAs through the MACOM to AEC.

(11) Ensure that the installation proponents initiate required environmental analyses early in the planning process and plan the preparation of necessary NEPA documentation.

(12) Ensure NEPA awareness and/or training is provided for professional staff, installation-level proponents, and document reviewers (for example, master planning, range control, etc.).

(13) Solicit support from MACOMs, CBTDEVs, and MATDEVs, as appropriate, in preparing site-specific environmental analysis.

(14) Ensure that local citizens are aware of and, where appropriate, involved in NEPA analyses, and that public comments are obtained and considered in decisions regarding proposals.

(15) Use environmental impact analyses to determine the best alternatives from an environmental perspective, and to ensure that these determinations are part of the Army decision process.

(p) *Environmental Officers.* Environmental officers (at the Installation, MACOM, and Army activity level) shall, under the authority of the Installation Commander; Commanders of U.S. Army Reserves Regional Support Commands; and Director NGB–ARE (Installation Commanders):

(1) Represent the Installation, MACOM, or activity Commander on NEPA matters.

(2) Advise the proponent on the selection, preparation, and completion of NEPA analyses and documentation. This approach will include oversight on behalf of the proponent to ensure adequacy and support for the proposed action, including mitigation monitoring.

(3) Develop and publish local guidance and procedures for use by NEPA proponents to ensure that NEPA documentation is procedurally and technically correct. (This includes approval of Records of Environmental Consideration (RECs).)

(4) Identify any additional environmental information needed to support informed Army decision-making.

(5) Budget for resources to maintain oversight with NEPA and this part.

(6) Assist proponents, as necessary, to identify issues, impacts, and possible alternatives and/or mitigations relevant to specific proposed actions.

(7) Assist, as required, in monitoring to ensure that specified mitigation measures in NEPA analyses are accomplished. This monitoring includes assessing the effectiveness of the mitigations.

(8) Ensure completion of agency and community coordination.

(q) *Proponents.* Proponents at all levels will:

(1) Identify the proposed action, the purpose and need, and reasonable alternatives for accomplishing the action.

(2) Fund and prepare NEPA analyses and documentation for their proposed actions. This responsibility will include negotiation for matrix support and services outside the chain of command when additional expertise is needed to prepare, review, or otherwise support the development and approval of NEPA analyses and documentation. These NEPA costs may be borne by successful contract offerors.

(3) Ensure accuracy and adequacy of NEPA analyses, regardless of the author. This work includes incorporation of comments from appropriate servicing Army environmental and legal staffs.

(4) Ensure adequate opportunities for public review and comment on proposed NEPA actions, in accordance with applicable laws and EOs as discussed in § 651.14 (e). This step includes the incorporation of public and agency input into the decision-making process.

(5) Ensure that NEPA analysis is prepared and staffed sufficiently to comply with the intent and requirements of federal laws and Army policy. These documents will provide enough information to ensure that Army decision makers (at all levels) are informed in the performance of their duties (40 CFR 1501.2, 1505.1). This result requires coordination and resolution of important issues developed during the environmental analysis process, especially when the proposed action may involve significant environmental impacts, and includes the incorporation of comments from an affected installation's environmental office in recommendations made to decision makers.

(6) Adequately fund and implement the decision including all mitigation actions and effectiveness monitoring.

(7) Prepare and maintain the official record copy of all NEPA analyses and documentation for which they are the proponent. This step will include the provision of electronic copies of all EAs, final EISs, and Records of Decision (RODs), through their chain of command, to AEC, and forwarding of those same documents to the Defense Technical Information Center (DTIC) as part of their public distribution procedures. In addition, copies of all EAs and FNSIs (in electronic copy) will be provided to ODEP. A copy of the documentation should be maintained for six years after signature of the FNSI/ROD.

(8) Maintain the administrative record for the environmental analysis performed. The administrative record shall be retained by the proponent for a period of six years after completion of the action, unless the action is controversial or of a nature that warrants keeping it longer. The administrative record includes all documents and information used to make the decision. This administrative record should contain, but is not limited to, the following types of records:

(i) Technical information used to develop the description of the proposed action, purpose and need, and the range of alternatives.

(ii) Studies and inventories of affected environmental baselines.

(iii) Correspondence with regulatory agencies.

(iv) Correspondence with, and comments from, private citizens, Native American tribes, Alaskan Natives, local governments, and other individuals and agencies contacted during public involvement.

(v) Maps used in baseline studies.

(vi) Maps and graphics prepared for use in the analysis.

(vii) Affidavits of publications and transcripts of any public participation.

(viii) Other written records that document the preparation of the NEPA analysis.

(ix) An index or table of contents for the administrative record.

(9) Identify other requirements that can be integrated and coordinated within the NEPA process. After doing so, the proponent should establish a strategy for concurrent, not sequential, compliance; sharing similar data, studies, and analyses; and consolidating opportunities for public participation. Examples of relevant statutory and regulatory processes are given in § 651.14 (e).

(10) Identify and coordinate with public agencies, private organizations, and individuals that may have an interest in or jurisdiction over a

resource that might be impacted. Coordination should be accomplished in cooperation with the Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities. Applicable agencies include, but are not limited to:

(i) State Historic Preservation Officer.

(ii) Tribal Historic Preservation Officer.

(iii) U.S. Fish and Wildlife Service.

(iv) Regional offices of the EPA.

(v) State agencies charged with protection of the environment, natural resources, and fish and wildlife.

(vi) USACE Civil Works regulatory functions, including Clean Water Act, Section 404, permitting and wetland protection.

(vii) National Marine Fisheries Service.

(viii) Local agencies and/or governing bodies.

(ix) Environmental interest groups.

(x) Minority, low-income, and disabled populations.

(xi) Tribal governments.

(xii) Existing advisory groups (for example, Restoration Advisory Boards, Citizens Advisory Commissions, etc.).

(11) Identify and coordinate, in concert with environmental offices, proposed actions and supporting environmental analyses with local and/or regional ecosystem management initiatives such as the Mojave Desert Ecosystem Management Initiative or the Chesapeake Bay Initiative.

(12) Review Army policies, including AR 200–1 (Environmental Protection and Enhancement), AR 200–3 (Natural Resources—Land, Forest, and Wildlife Management), and AR 200–4 (Cultural Resources Management) to ensure that the proposed action is coordinated with appropriate resource managers, operators, and planners, and is consistent with existing Army plans and their supporting NEPA analyses.

(13) Identify potential impacts to (and consult with as appropriate) American Indian, Alaskan Native, or Native Hawaiian lands, resources, or cultures (for example, sacred sites, traditional cultural properties, treaty rights, subsistence hunting or fishing rights, or cultural items subject to the Native American Graves Protection and Repatriation Act (NAGPRA)). All consultation shall be conducted on a Government-to-Government basis in accordance with the Presidential Memorandum on Government-to-Government Relations with Tribal Governments (April 29, 1994) (3 CFR, 1994 Comp., p. 1007) and AR 200–4 (Cultural Resources Management). Proponents shall consider, as appropriate, executing Memoranda of Agreements (MOAs) with interested Native American groups and tribes to facilitate timely and effective participation in the NEPA process. These agreements should be accomplished in cooperation with Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities.

(14) Review NEPA documentation that relies upon mitigations that were not accomplished to determine if the NEPA analysis needs to be rewritten or updated. Such an update is required if the unaccomplished mitigation was used to support a FNSI. Additional public notice/involvement must accompany any rewrites.

(r) *The Commander, U.S. Army Training and Doctrine Command (TRADOC).* The Commander, TRADOC will:

(1) Ensure that NEPA requirements are understood and options incorporated in the Officer Foundation Standards (OFS).

(2) Integrate environmental considerations into doctrine, training, leader development, organization, materiel, and soldier (DTLOMS) processes.

(3) Include environmental expert representation on all Integrated Concept Teams (ICTs) involved in requirements determinations.

(4) Ensure that TRADOC CBTDEVs retain and transfer any environmental analysis or related data (such as alternatives analysis) to the MATDEV upon approval of a materiel need. This information and data will serve as the basis for the MATDEV's Acquisition Strategy and subsequent NEPA analyses.

(5) Ensure that environmental considerations are incorporated into the Mission Needs Statements (MNSs) and Operational Requirements Documents (ORDs).

§ 651.5 Army policies.

(a) NEPA establishes broad federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The Army is expected to manage those aspects of the environment affected by Army activities; comprehensively integrating environmental policy objectives into planning and decision-making. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing Army planners and decision makers. The Army will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of Army decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality.

(b) The Army will actively incorporate environmental considerations into informed decision-making, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. Army proponents, participants, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations. While carrying out its mission, the Army will also encourage the wise stewardship of natural and cultural resources for future generations. Decision makers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.

(c) Environmental analyses will reflect appropriate consideration of non-statutory environmental issues identified by federal and DOD orders, directives, and policy guidance. Some examples are in § 651.14 (e). Potential issues will be discussed and critically evaluated during scoping and other public involvement processes.

(d) The Army will continually take steps to ensure that the NEPA program is effective and efficient. Effectiveness of the program will be determined by the degree to which environmental considerations are included on a par with the military mission in project planning and decision-making. Efficiency will be promoted through the following:

(1) Awareness and involvement of the proponent in the NEPA process.

(2) NEPA technical and awareness training, as appropriate, at all decision levels of the Army.

(3) Where appropriate, the use of programmatic analyses and tiering to ensure consideration at the appropriate decision levels, elimination of repetitive discussion, consideration of cumulative effects, and focus on issues that are important and appropriate for discussion at each level.

(4) Use of the scoping and public involvement processes to limit the analysis of issues to those which are of interest to the public and/or important to the decision-making at hand.

(5) Elimination of needless paperwork by focusing documents on the major environmental issues affecting those decisions.

(6) Early integration of the NEPA process into all aspects of Army planning, so as to prevent disruption in the decision-making process; ensuring that NEPA personnel function as team members, supporting the Army planning process and sound Army decision-making. All NEPA analyses will be prepared by an interdisciplinary team.

(7) Partnering or coordinating with agencies, organizations, and individuals whose specialized expertise will improve the NEPA process.

(8) Oversight of the NEPA program to ensure continuous process improvement. NEPA requirements will be integrated into other environmental reporting requirements, such as the ISR.

(9) Clear and concise communication of data, documentation, and information relevant to NEPA analysis and documentation.

(10) Environmental analysis of strategic plans based on:

(i) Scoping thoroughly with agencies, organizations, and the public;

(ii) Setting specific goals for important environmental resources;

(iii) Monitoring of impacts to these resources;

(iv) Reporting of monitoring results to the public; and

(v) Adaptive management of Army operations to stay on course with the strategic plan's specific resource goals.

(11) Responsive staffing through HQDA and the Secretariat. To the extent possible, documents and transmittal packages will be acted upon within 30 calendar days of receipt by each office through which they are staffed. These actions will be approved and transmitted, if the subject material is adequate; or returned with comment in those cases where additional work is required. Cases where these policies are violated should be identified to ASA (I&E) for resolution.

(e) Army leadership and commanders at all levels are required to:

(1) Establish and maintain the capability (personnel and other resources) to ensure adherence to the policies and procedures specified by this part. This should include the use of the PPBES, EPR, and other established resourcing processes. This capability can be provided through the use of a given mechanism or mix of mechanisms (contracts, matrix support, and full-time permanent (FTP) staff), but sufficient FTP staff involvement is required to ensure:

(i) Army cognizance of the analyses and decisions being made; and

(ii) Sufficient institutional knowledge of the NEPA analysis to ensure that Army NEPA responsibilities (pre- and post-decision) are met. Every person preparing, implementing, supervising, and managing projects involving NEPA analysis must be familiar with the requirements of NEPA and the provisions of this part.

(2) Ensure environmental responsibility and awareness among personnel to most effectively implement the spirit of NEPA. All personnel who are engaged in any activity or combination of activities that significantly affect the quality of the human environment will be aware of their NEPA responsibility. Only through alertness, foresight, notification through the chain of command, and training and education will NEPA goals be realized.

(f) The worldwide, transboundary, and long-range character of environmental problems will be recognized, and, where consistent with national security requirements and U.S. foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human and natural environment. Consideration of the environment for Army decisions involving activities outside the United States (see § 651.1(e)) will be accomplished pursuant to Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions, 4 January 1979), host country final governing standards, DOD Directive (DODD) 6050.7 (Environmental Effects Abroad of Major DOD Actions), DOD Instructions (DODIs), and the requirements of this part. An environmental planning and evaluation process will be incorporated into Army actions that may substantially affect the global commons, environments of other nations, or any protected natural or ecological resources of global importance.

(g) Army NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions.

(1) Supplemental NEPA documentation is required when:

(i) The Army makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.

(2) This review requires that the proponent merely initiate another ''hard look'' to ascertain the adequacy of the previous analyses and documentation in light of the conditions listed in paragraph (g)(1) of this section. If this review indicates no need for new or supplemental documentation, a REC can be produced in accordance with this part. Proponents are required to periodically review relevant existing NEPA analyses to ascertain the need for supplemental documentation and document this review in a REC format.

(h) Contractors frequently prepare EISs and EAs. To obtain unbiased analyses, contractors must be selected in a manner avoiding any conflict of interest. Therefore, contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. The contractor's efforts should be closely monitored throughout the contract to ensure an adequate assessment/statement and also avoid extensive, time-consuming, and costly analyses or revisions. Project proponents and NEPA program managers must be continuously informed and involved.

(i) When appropriate, NEPA analyses will reflect review for operations security principles and procedures, described in AR 530–1 (Operations Security (OPSEC)), on the cover sheet or signature page.

(j) Environmental analyses and associated investigations are advanced project planning, and will be funded from sources other than military construction (MILCON) funds. Operations and Maintenance Army (OMA), Operations and Maintenance, Army Reserve (OMAR), and Operations and Maintenance, Army National Guard (OMANG), RDT&E, or other operating funds are the proper sources of funds for such analysis and documentation. Alternative Environmental Compliance Achievement Program (non-ECAP) funds will be identified for NEPA documentation, monitoring, and other required studies as part of the MILCON approval process.

(k) Costs of design and construction mitigation measures required as a direct result of MILCON projects will be paid from MILCON funds, which will be included in the cost estimate and description of work on DD Form 1391, Military Construction Project Data.

(l) Response actions implemented in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation

and Recovery Act (RCRA) are not legally subject to NEPA and do not require separate NEPA analysis. As a matter of Army policy, CERCLA and RCRA analysis and documentation should incorporate the values of NEPA and:

(1) Establish the scope of the analysis through full and open public participation;

(2) Analyze all reasonable alternative remedies, evaluating the significance of impacts resulting from the alternatives examined; and

(3) Consider public comments in the selection of the remedy. The decision maker shall ensure that issues involving substantive environmental impacts are addressed by an interdisciplinary team.

(m) MATDEVs, scientists and technologists, and CBTDEVs are responsible for ensuring that their programs comply with NEPA as directed in this part.

(1) Prior to assignment of a MATDEV to plan, execute, and manage a potential acquisition program, CBTDEVs will retain environmental analyses and data from requirements determination activities, and Science and Technology (S&T) organizations will develop and retain data for their technologies. These data will transition to the MATDEV upon assignment to plan, execute, and manage an acquisition program. These data (collected and produced), as well as the decisions made by the CBTDEVs, will serve as a foundation for the environment, safety, and health (ESH) evaluation of the program and the incorporation of program-specific NEPA requirements into the Acquisition Strategy. Programmatic ESH evaluation is considered during the development of the Acquisition Strategy as required by DOD 5000.2–R for all ACAT programs. Programmatic ESH evaluation is not a NEPA document. It is a planning, programming, and budgeting strategy into which the requirements of this part are integrated. Environmental analysis must be a continuous process throughout the materiel development program. During this continuous process, NEPA analysis and documentation may be required to support decision-making prior to any decision that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). In accordance with DOD 5000.2.R, the MATDEV is responsible for environmental analysis of acquisition life-cycle activities (including disposal). Planning to accomplish these responsibilities will be included in the appropriate section of the Acquisition Strategy.

(2) MATDEVs are responsible for the documentation regarding general environmental effects of all aspects of the system (including operation, fielding, and disposal) and the specific effects for all activities for which he/she is the proponent.

(3) MATDEVs will include, in their Acquisition Strategy, provisions for developing and supplementing their NEPA analyses and documentation, and provide data to support supplemental analyses, as required, throughout the life cycle of the system. The MATDEV will coordinate with ASA (AL&T) or MACOM proponent office, ACSIM, and ASA(I&E), identifying NEPA analyses and documentation needed to support milestone decisions. This requirement will be identified in the Acquisition Strategy and the status will be provided to the ACSIM representative prior to milestone review. The Acquisition Strategy will outline the system-specific plans for NEPA compliance, which will be reviewed and approved by the appropriate MDA and ACSIM. Compliance with this plan will be addressed at Milestone Reviews.

(n) AR 700–142 requires that environmental requirements be met to support materiel fielding. During the development of the Materiel Fielding Plan (MFP), and Materiel Fielding Agreement (MFA), the MATDEV and the materiel receiving command will identify environmental information needed to support fielding decisions. The development of generic system environmental and NEPA analyses for the system under evaluation, including military construction requirements and new equipment training issues, will be the responsibility of the MATDEV. The development of site-specific environmental analyses and NEPA documentation (EAs/EISs), using generic system environmental analyses supplied by the MATDEV, will be the responsibility of the receiving Command.

(o) Army proponents are encouraged to draw upon the special expertise available within the Office of the Surgeon General (OSG) (including the U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM)), and USACE District Environmental Staff to identify and evaluate environmental health impacts, and other agencies, such as USAEC, can be used to assess potential environmental impacts). In addition, other special expertise is available in the Army, DOD, other federal agencies, state and local agencies, tribes, and other organizations and individuals. Their participation and assistance is also encouraged.

§ 651.6 NEPA analysis staffing.

(a) NEPA analyses will be prepared by the proponent using appropriate resources (funds and manpower). The proponent, in coordination with the appropriate NEPA program manager, shall determine what proposal requires NEPA analysis, when to initiate NEPA analysis, and what level of NEPA analysis is initially appropriate. The proponent shall remain intimately involved in determining appropriate milestones, timelines, and inputs required for the successful conduct of the NEPA process, including the use of scoping to define the breadth and depth of analysis required. In cases where the document addresses impacts to an environment whose management is not in the proponents' chain of command (for example, installation management of a range for MATDEV testing or installation management of a fielding location), the proponent shall coordinate the analysis and preparation of the document and identify the resources needed for its preparation and staffing through the command structure of that affected activity.

(b) The approving official is responsible for approving NEPA documentation and ensuring completion of the action, including any mitigation actions needed. The approving official may be an installation commander; or, in the case of combat/materiel development, the MATDEV, MDA, or AAE.

(c) Approving officials may select a lead reviewer for NEPA analysis before approving it. The lead reviewer will determine and assemble the personnel needed for the review process. Funding needed to accomplish the review shall be negotiated with the proponent, if required. Lead reviewer may be an installation EC or a NEPA POC designated by an MDA for a combat/materiel development program.

(d) The most important document is the initial NEPA document (draft EA or draft EIS) being processed. Army reviewers are accountable for ensuring thorough early review of draft NEPA analyses. Any organization that raises new concerns or comments during final staffing will explain why issues were not raised earlier. NEPA analyses requiring public release in the FR will be forwarded to ASA(I&E), through the chain of command, for review. This includes all EISs and all EAs that are of national interest or concern. The activities needed to support public release will be coordinated with ASA(I&E). Public release will not proceed without ASA(I&E) approval.

(e) Public release of NEPA analyses in the FR should be limited to EISs, or EAs

that are environmentally controversial or of national interest or concern. When analyses address actions affecting numerous sites throughout the Continental United States (CONUS), the proponent will carefully evaluate the need for publishing an NOA in the FR, as this requires an extensive review process, as well as supporting documentation alerting EPA and members of Congress of the action. At a minimum, and depending on the proponent's command structure, the following reviews must be accomplished:

(1) The NEPA analysis must be reviewed by the MACOM Legal Counsel or TJAG, ACSIM, ASA(I&E), and Office of General Counsel (OGC).

(2) The supporting documentation must be reviewed by Office of the Chief of Legislative Liaison (OCLL) and Office of the Chief of Public Affairs (OCPA).

(3) Proponents must allow a minimum of 30 days to review the documentation and must allow sufficient time to address comments from these offices prior to publishing the NOA.

(4) The proponent may consider publishing the NOA in local publication resources near each site. Proponents are strongly advised to seek the assistance of the local environmental office and command structure in addressing the need for such notification.

§ 651.7 Delegation of authority for non-acquisition systems.

(a) MACOMs can request delegation authority and responsibility for an EA of national concern or an EIS from ASA(I&E). The proponent, through the appropriate chain of command, and with the concurrence of environmental offices, forwards to HQDA (ODEP) the request to propose, prepare, and finalize an EA and FNSI or EIS through the ROD stage. The request must include, at a minimum, the following:

(1) A description of the purpose and need for the action.

(2) A description of the proposed action and a preliminary list of alternatives to that proposed action, including the ''no action'' alternative. This constitutes the DOPAA.

(3) An explanation of funding requirements, including cost estimates, and how they will be met.

(4) A brief description of potential issues of concern or controversy, including any issues of potential Army-wide impact.

(5) A plan for scoping and public participation.

(6) A timeline, with milestones for the EIS action.

(b) If granted, a formal letter will be provided by ASA(I&E) outlining extent, conditions, and requirements for the NEPA action. Only the ASA(I&E) can delegate this authority and responsibility. When delegated signature authority by HQDA, the MACOM will be responsible for complying with this part and associated Army environmental policy. This delegation, at the discretion of ASA(I&E), can include specific authority and responsibility for coordination and staffing of:

(1) EAs and FNSIs, and associated transmittal packages, as specified in § 651.35(c).

(2) NOIs, Preliminary Draft EISs (PDEISs), Draft EISs (DEISs), Final EISs (FEISs), RODs and all associated transmittal packages as specified in § 651.45. Such delegation will specify requirements for coordination with ODEP and ASA (I&E).

§ 651.8 Disposition of final documents.

All NEPA documentation and supporting administrative records shall be retained by the proponent's office for a minimum of six years after signature of the FNSI/ROD or the completion of the action, whichever is greater. Copies of EAs, and final EISs will be forwarded to AEC for cataloging and retention in the Army NEPA library. The DEIS and FEIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid. The ACSIM shall forward copies of all FEISs to DTIC, the National Archives, and Records Administration.

Subpart B—National Environmental Policy Act and the Decision Process

§ 651.9 Introduction.

(a) The NEPA process is the systematic examination of possible and probable environmental consequences of implementing a proposed action. Integration of the NEPA process with other Army projects and program planning must occur at the earliest possible time to ensure that:

(1) Planning and decision-making reflect Army environmental values, such as compliance with environmental policy, laws, and regulations; and that these values are evident in Army decisions. In addition, Army decisions must reflect consideration of other requirements such as Executive Orders and other non-statutory requirements, examples of which are enumerated in § 651.14(e).

(2) Army and DOD environmental policies and directives are implemented.

(3) Delays and potential conflicts in the process are minimized. The public should be involved as early as possible to avoid potential delays.

(b) All Army decision-making that may impact the human environment will use a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences, planning, and the environmental design arts (section 102(2)(a), Public Law 91–190, 83 Stat. 852, National Environmental Policy Act of 1969 (NEPA)). This approach allows timely identification of environmental effects and values in sufficient detail for concurrent evaluation with economic, technical, and mission-related analyses, early in the decision process.

(c) The proponent of an action or project must identify and describe the range of reasonable alternatives to accomplish the purpose and need for the proposed action or project, taking a ''hard look'' at the magnitude of potential impacts of implementing the reasonable alternatives, and evaluating their significance. To assist in identifying reasonable alternatives, the proponent should consult with the installation environmental office and appropriate federal, tribal, state, and local agencies, and the general public.

§ 651.10 Actions requiring environmental analysis.

The general types of proposed actions requiring environmental impact analysis under NEPA, unless categorically excluded or otherwise included in existing NEPA documentation, include:

(a) Policies, regulations, and procedures (for example, Army and installation regulations).

(b) New management and operational concepts and programs, including logistics; RDT&E; procurement; personnel assignment; real property and facility management (such as master plans); and environmental programs such as Integrated Natural Resource Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP), and Integrated Pest Management Plan. NEPA requirements may be incorporated into other Army plans in accordance with 40 CFR 1506.4.

(c) Projects involving facilities construction.

(d) Operations and activities including individual and unit training, flight operations, overall operation of installations, or facility test and evaluation programs.

(e) Actions that require licenses for operations or special material use, including a Nuclear Regulatory Commission (NRC) license, an Army radiation authorization, or Federal Aviation Administration air space

request (new, renewal, or amendment), in accordance with AR 95–50.

(f) Materiel development, operation and support, disposal, and/or modification as required by DOD 5000.2–R.

(g) Transfer of significant equipment or property to the ARNG or Army Reserve.

(h) Research and development including areas such as genetic engineering, laser testing, and electromagnetic pulse generation.

(i) Leases, easements, permits, licenses, or other entitlement for use, to include donation, exchange, barter, or Memorandum of Understanding (MOU). Examples include grazing leases, grants of easement for highway right-of-way, and requests by the public to use land for special events such as air shows or carnivals.

(j) Federal contracts, grants, subsidies, loans, or other forms of funding such as Government-Owned, Contractor-Operated (GOCO) industrial plants or housing and construction via third-party contracting.

(k) Request for approval to use or store materials, radiation sources, hazardous and toxic material, or wastes on Army land. If the requester is non-Army, the responsibility to prepare proper environmental documentation may rest with the non-Army requester, who will provide needed information for Army review. The Army must review and adopt all NEPA documentation before approving such requests.

(l) Projects involving chemical weapons/munitions.

§ 651.11 Environmental review categories.

The following are the five broad categories into which a proposed action may fall for environmental review:

(a) *Exemption by law.* The law must apply to DOD and/or the Army and must prohibit, exempt, or make impossible full compliance with the procedures of NEPA (40 CFR 1506.11). While some aspects of Army decision-making may be exempted from NEPA, other aspects of an action are still subject to NEPA analysis and documentation. The fact that Congress has directed the Army to take an action does not constitute an exemption.

(b) *Emergencies.* In the event of an emergency, the Army will, as necessary, take immediate actions that have environmental impacts, such as those to promote national defense or security or to protect life or property, without the specific documentation and procedural requirements of other sections of this part. In such cases, at the earliest practicable time, the HQDA proponent will notify the ODEP, which in turn will notify the ASA(I&E). ASA(I&E) will coordinate with the Deputy Under Secretary of Defense for Installations and Environment (DUSD(IE)) and the CEQ regarding the emergency and subsequent NEPA compliance after the emergency action has been completed. These notifications apply only to actions necessary to control the immediate effects of the emergency. Other actions remain subject to NEPA review (40 CFR 1506.11). A public affairs plan should be developed to ensure open communication among the media, the public, and the installation. The Army will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this part or the CEQ regulations. However, the Army's on-site commander dealing with the emergency will consider the probable environmental consequences of proposed actions, and will minimize environmental damage to the maximum degree practicable, consistent with protecting human life, property, and national security. State call-ups of ARNG during a natural disaster or other state emergency are excluded from this notification requirement. After action reports may be required at the discretion of the ASA(I&E).

(c) *Categorical Exclusions (CXs).* These are categories of actions that normally do not require an EA or an EIS. The Army has determined that they do not individually or cumulatively have a substantial effect on the human environment. Qualification for a CX is further described in Subpart D and Appendix B of this part. In accordance with § 651.29, actions that degrade the existing environment or are environmentally controversial or adversely affect environmentally sensitive resources will require an EA.

(d) *Environmental Assessment.* Proposed Army actions not covered in the first three categories (paragraphs (a) through (c) of this section) must be analyzed to determine if they could cause significant impacts to the human or natural environment (see § 651.39). The EA determines whether possible impacts are significant, thereby warranting an EIS. This requires a ''hard look'' at the magnitude of potential impacts, evaluation of their significance, and documentation in the form of either an NOI to prepare an EIS or a FNSI. The format (§ 651.34) and requirements for this analysis are addressed in Subpart E of this part (see § 651.33 for actions normally requiring an EA). The EA is a valuable planning tool to discuss and document environmental impacts, alternatives, and controversial actions, providing public and agency participation, and identifying mitigation measures.

(e) *EIS.* When an action clearly has significant impacts or when an EA cannot be concluded by a FNSI, an EIS must be prepared. An EIS is initiated by the NOI (§ 651.22), and will examine the significant environmental effects of the proposed action as well as accompanying measures to mitigate those impacts. This process requires formal interaction with the public, a formal ''scoping'' process, and specified timelines for public review of the documentation and the incorporation of public comments. The format and requirements for the EIS are addressed in Subpart F of this part (see § 651.42 for actions normally requiring an EIS).

§ 651.12 Determining appropriate level of NEPA analysis.

(a) The flow chart shown in Figure 1 summarizes the process for determining documentation requirements, as follows:

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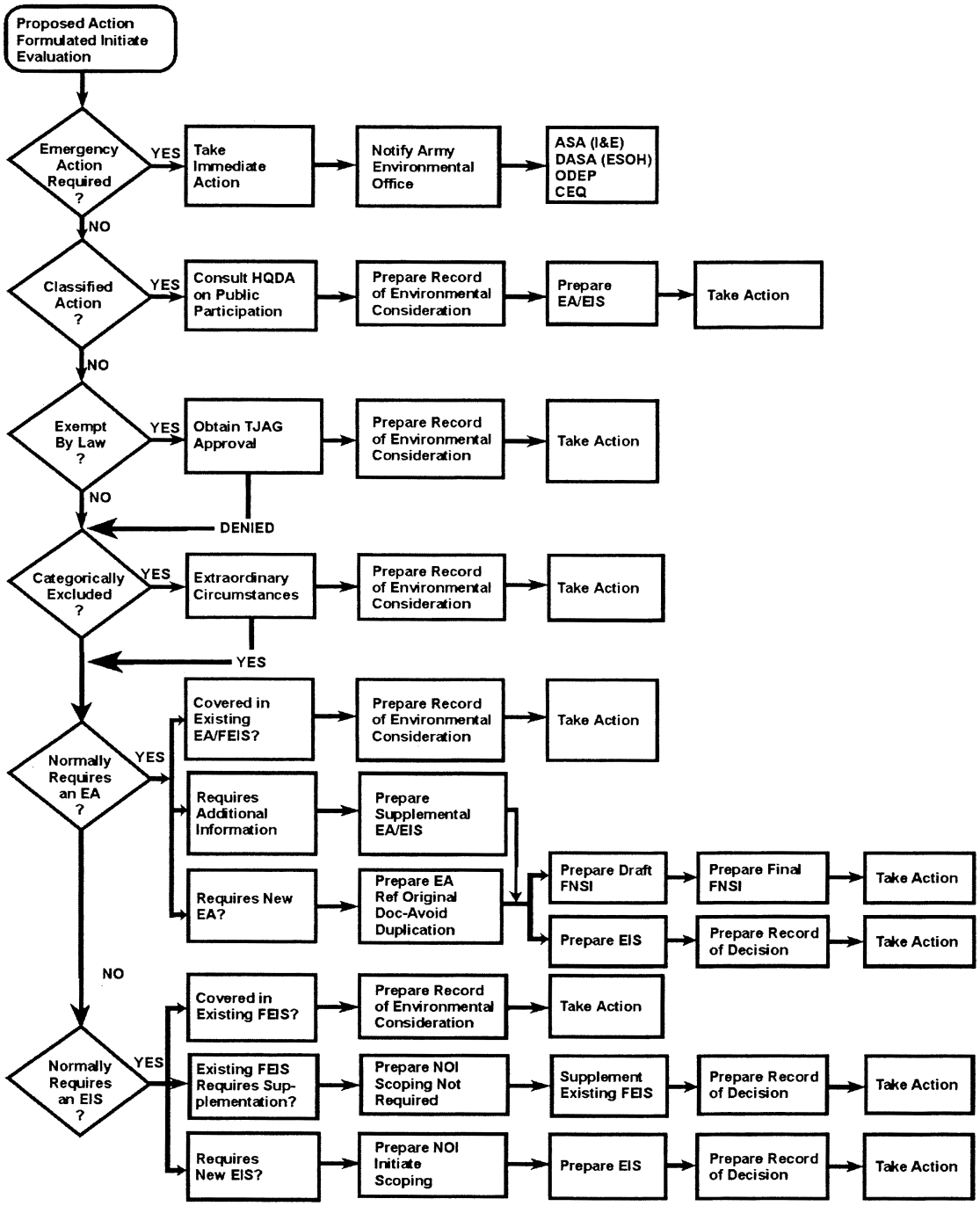

Figure 1. Flow chart summarizing process for determination of document requirements.

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(1) If the proposed action qualifies as a CX (Subpart D of this part), and the screening criteria are met (§ 651.29), the action can proceed. Some CXs require a REC.

(2) If the proposed action is adequately covered within an existing EA or EIS, a REC is prepared to that effect. The REC should state the applicable EA or EIS title and date, and identify where it may be reviewed (§ 651.19, Figure 3). The REC is then attached to the proponent's record copy of that EA or EIS.

(3) If the proposed action is within the general scope of an existing EA or EIS, but requires additional information, a supplement is prepared, considering the new, modified, or missing information. Existing documents are incorporated by reference and conclusions are published as either a FNSI or NOI to supplement the EIS.

(4) If the proposed action is not covered adequately in any existing EA or EIS, or is of a significantly larger scope than that described in the existing document, an EA is prepared, followed by either a FNSI or NOI to prepare an EIS. Initiation of an EIS may proceed without first preparing an EA, if deemed appropriate by the proponent.

(5) If the proposed action is not within the scope of any existing EA or EIS, then the proponent must begin the preparation of a new EA or EIS, as appropriate.

(b) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will document their use in a REC FNSI, or ROD.

§ 651.13 Classified actions.

(a) For proposed actions and NEPA analyses involving classified information, AR 380–5 (Department of the Army Information Security Program) will be followed.

(b) Classification does not relieve a proponent of the requirement to assess and document the environmental effects of a proposed action.

(c) When classified information can be reasonably separated from other information and a meaningful environmental analysis produced, unclassified documents will be prepared and processed in accordance with this part. Classified portions will be kept separate and provided to reviewers and decision makers in accordance with AR 380–5.

(d) When classified information is such an integral part of the analysis of a proposal that a meaningful unclassified NEPA analysis cannot be produced, the proponent, in consultation with the appropriate security and environmental offices, will form a team to review classified NEPA analysis. This interdisciplinary team will include environmental professionals to ensure that the consideration of environmental effects will be consistent with the letter and intent of NEPA, including public participation requirements for those aspects which are not classified.

§ 651.14 Integration with Army planning.

(a) *Early integration.* The Army goal is to concurrently integrate environmental reviews with other Army planning and decision-making actions, thereby avoiding delays in mission accomplishment. To achieve this goal, proponents shall complete NEPA analysis as part of any recommendation or report to decision makers prior to the decision (subject to 40 CFR 1506.1). Early planning (inclusion in Installation Master Plans, INRMPs, ICRMPs, Acquisition Strategies, strategic plans, etc.) will allow efficient program or project execution later in the process.

(1) The planning process will identify issues that are likely to have an effect on the environment, or to be controversial. In most cases, local citizens and/or existing advisory groups should assist in identifying potentially controversial issues during the planning process. The planning process also identifies minor issues that have little or no measurable environmental effect, and it is sound NEPA practice to reduce or eliminate discussion of minor issues to help focus analyses. Such an approach will minimize unnecessary analysis and discussion in the NEPA process and documents.

(2) Decision makers will be informed of and consider the environmental consequences at the same time as other factors such as mission requirements, schedule, and cost. If permits or coordination are required (for example, Section 404 of the Clean Water Act, Endangered Species Act consultation, Section 106 of the National Historic Preservation Act (NHPA), etc.), they should be initiated no later than the scoping phase of the process and should run parallel to the NEPA process, not sequential to it. This practice is in accordance with the recommendations presented in the CEQ publication entitled ''The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years.''

(3) NEPA documentation will accompany the proposal through the Army review and decision-making processes. These documents will be forwarded to the planners, designers, and/or implementers, ensuring that the recommendations and mitigations upon which the decision was based are being carried out. The implementation process will provide necessary feedback for adaptive environmental management; responding to inaccuracies or uncertainties in the Army's ability to accurately predict impacts, changing field conditions, or unexpected results from monitoring. The integration of NEPA into the ongoing planning activities of the Army can produce considerable savings to the Army.[1]

(b) *Time limits.* The timing of the preparation, circulation, submission, and public availability of NEPA documentation is important to ensure that environmental values are integrated into Army planning and decisions.

(1) *Categorical exclusions.* When a proposed action is categorically excluded from further environmental review (Subpart D and Appendix B of this part), the proponent may proceed immediately with that action upon receipt of all necessary approvals, (including local environmental office confirmation that the CX applies to the proposal) and the preparation of a REC, if required.

(2) *Findings of no significant impact.* (i) A proponent will make an EA and draft FNSI available to the public for review and comment for a minimum of 30 days prior to making a final decision and proceeding with an action. If the proposed action is one of national concern, is unprecedented, or normally requires an EIS (§ 651.42), the FNSI must be published in the FR. Otherwise, the FNSI must be published in local newspapers and be made widely available. The FNSI must articulate the deadline for receipt of comments, availability of the EA for review, and steps required to obtain the EA. This can include a POC, address, and phone number; a location; a reference to a website; or some equivalent mechanism. (In no cases will the only coordination mechanism be a website.) At the conclusion of the appropriate comment

[1] For example, a well-executed EA or EIS on an Installation Master Plan can eliminate the need for many case-by-case analyses and documentation for construction projects. After the approval of an adequate comprehensive plan (which adequately addresses the potential for environmental effects), subsequent projects can tier off of the Master Plan NEPA analysis (AR 210–20). Other integration of the NEPA process and broad-level planning can lead to the ''tiering'' of NEPA, allowing the proponent to minimize the effort spent on individual projects, and ''incorporating by reference'' the broader level environmental considerations. This tiering allows the development of program level (programmatic) EAs and EISs, which can introduce greater economies of scale. These assessments are addressed in more detail in paragraph (c) of this section.

period, as specified in Figure 2, the decision maker may sign the FNSI and take immediate action, unless sufficient public comments are received to warrant more time for their resolution. Figure 2 follows:

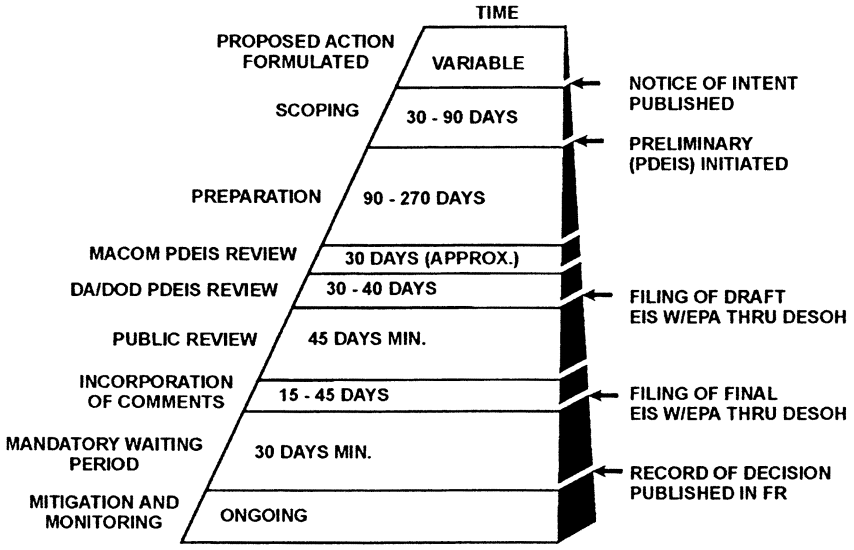

Figure 2. Time involved for preparing and processing an environmental impact statement.

(ii) A news release is required to publicize the availability of the EA and draft FNSI, and a simultaneous announcement that includes publication in the FR must be made by HQDA, if warranted (see § 651.35 (e)). The 30-day waiting period begins at the time that the draft FNSI is publicized (40 CFR 1506.6(b)).

(iii) In cases where the 30-day comment period jeopardizes the project and the full comment period would provide no public benefit, the period may be shortened with appropriate approval by a higher decision authority (such as a MACOM). In no circumstances should the public comment period for an EA/draft FNSI be less than 15 days. A deadline and POC for receipt of comments must be included in the draft FNSI and the news release.

(3) *EIS.* The EPA publishes a weekly notice in the FR of the EISs filed during the preceding week. This notice usually occurs each Friday. An NOA reaching EPA on a Friday will be published in the following Friday issue of the FR. Failure to deliver an NOA to EPA by close of business on Friday will result in an additional one-week delay. A news release publicizing the action will be made in conjunction with the notice in the FR. The following time periods, calculated from the publication date of the EPA notice, will be observed:

(i) Not less than 45 days for public comment on DEISs (40 CFR 1506.10(c)).

(ii) Not less than 15 days for public availability of DEISs prior to any public hearing on the DEIS (40 CFR 1506(c)(2)).

(iii) Not less than 90 days from filing the DEIS prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10(b) and (c)).

(iv) The time periods prescribed here may be extended or reduced in accordance with 40 CFR 1506.10(b)(2) and (d).

(v) When variations to these time limits are set, the Army agency should consider the factors in 40 CFR 1501.8(b)(1).

(vi) The proponent may also set time limits for other procedures or decisions related to DEISs and FEISs as listed in 40 CFR 1501.8(b)(2).

(vii) Because the entire EIS process could require more than one year (Figure 2 in paragraph (b)(2)(i) of this section), the process must begin as soon as the project is sufficiently mature to allow analysis of alternatives and the proponent must coordinate with all staff elements with a role to play in the NEPA process. DEIS preparation and response to comments constitute the largest portion of time to prepare an FEIS.

(viii) A public affairs plan should be developed that provides for periodic interaction with the community. There is a minimum public review time of 90 days between the publication of the DEIS and the announcement of the ROD. After the availability of the ROD is announced, the action may proceed. This announcement must be made through the FR for those EISs for which HQDA signs the ROD. For other EISs, announcements in the local press are adequate. Figure 2 in paragraph (b)(2)(i) of this section indicates typical and required time periods for EISs.

(c) *Programmatic environmental review (tiering).* (1) Army agencies are encouraged to analyze actions at a programmatic level for those programs that are similar in nature or broad in scope (40 CFR 1502.4(c), 1502.20, and 1508.23). This level of analysis will eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad programmatic EA or EIS has been prepared, any subsequent EIS or EA on an action included within the entire program or policy (particularly a site-specific action) need only summarize issues discussed in the broader statement and concentrate on the issues specific to the subsequent action.[2] This subsequent

[2] As an example, an appropriate way to address diverse weapon system deployments would be to produce site-specific EAs or EISs for each major deployment installation, using the generic environmental effects of the weapon system

Continued

document will state where the earlier document is available.

(2) Army proponents are normally required to prepare many types of management plans that must include or be accompanied by appropriate NEPA analysis. NEPA analysis for these types of plans can often be accomplished with a programmatic approach, creating an analysis that covers a number of smaller projects or activities. In cases where such activities are adequately assessed as part of these normal planning activities, a REC can be prepared for smaller actions that cite the document in which the activities were previously assessed. Care must be taken to ensure that site-specific or case-specific conditions are adequately addressed in the existing programmatic document before a REC can be used, and the REC must reflect this consideration. If additional analyses are required, they can ''tier'' off the original analyses, eliminating duplication. Tiering, in this manner, is often applicable to Army actions that are long-term, multi-faceted, or multi-site.

(d) *Scoping.* (1) When the planning for an Army project or action indicates a need for an EIS, the proponent initiates the scoping process (see Subpart G of this part for procedures and actions). This process determines the scope of issues to address in the EIS and identifies the significant issues related to the proposed action. During the scoping, process participants identify the range of actions, alternatives, and impacts to consider in the EIS (40 CFR 1508.25). For an individual action, the scope may depend on the relationship of the proposed action to other NEPA documents. The scoping phase of the NEPA process, as part of project planning, will identify aspects of the proposal that are likely to have an effect or be controversial; and will ensure that the NEPA analyses are useful for a decision maker. For example, the early identification and initiation of permit or coordination actions can facilitate problem resolution, and, similarly, cumulative effects can be addressed early in the process and at the appropriate spatial and temporal scales.

(2) The extent of the scoping process, including public involvement, will depend on several factors. These factors include:

(i) The size and type of the proposed action.

(ii) Whether the proposed action is of regional or national interest.

(iii) Degree of any associated environmental controversy.

(iv) Size of the affected environmental parameters.

(v) Significance of any effects on them.

(vi) Extent of prior environmental review.

(vii) Involvement of any substantive time limits.

(viii) Requirements by other laws for environmental review.

(ix) Cumulative impacts.

(3) Through scoping, many future controversies can be eliminated, and public involvement can be used to narrow the scope of the study, concentrating on those aspects of the analysis that are truly important.

(4) The proponent may incorporate scoping as part of the EA process, as well. If the proponent chooses a public involvement strategy, the extent of scoping incorporated is at the proponent's discretion.

(e) *Analyses and documentation.* Several statutes, regulations, and Executive Orders require analyses, consultation, documentation, and coordination, which duplicate various elements and/or analyses required by NEPA and the CEQ regulations; often leading to confusion, duplication of effort, omission, and, ultimately, unnecessary cost and delay. Therefore, Army proponents are encouraged to identify, early in the NEPA process, opportunities for integrating those requirements into proposed Army programs, policies, and projects. Environmental analyses required by this part will be integrated as much as practicable with other environmental reviews, laws, and Executive Orders (40 CFR 1502.25). Incorporation of these processes must ensure that the individual requirements are met, in addition to those required by NEPA. The NEPA process does not replace the procedural or substantive requirements of other environmental statutes and regulations. Rather, it addresses them in one place so the decision maker has a concise and comprehensive view of the major environmental issues and understands the interrelationships and potential conflicts among the environmental components. NEPA is the ''umbrella'' that facilitates such coordination by integrating processes that might otherwise proceed independently. Prime candidates for such integration include, but are not limited to, the following:

(1) Clean Air Act, as amended (General Conformity Rule, 40 CFR parts 51 and 93).

(2) Endangered Species Act.

(3) NHPA, sections 106 and 110.

(4) NAGPRA (Public Law 101–601, 104 Stat. 3048).

(5) Clean Water Act, including Section 404(b)(1).

(6) American Indian Religious Freedom Act.

(7) Fish and Wildlife Coordination Act.

(8) Comprehensive Environmental Response, Compensation, and Liability Act.

(9) Resource Conservation and Recovery Act.

(10) Pollution Prevention Act.

(11) The Sikes Act, Public Law 86–797, 74 Stat. 1052.

(12) Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements (Executive Order 12856, 3 CFR, 1993 Comp., p. 616).

(13) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898, 3 CFR, 1994 Comp., p. 859).

(14) Indian Sacred Sites (Executive Order 13007, 3 CFR, 1996 Comp., p. 196).

(15) Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045, 3 CFR, 1997 Comp., p. 198).

(16) Federal Support of Community Efforts Along American Heritage Rivers (Executive Order 13061, 3 CFR, 1997 Comp., p. 221).

(17) Floodplain Management (Executive Order 11988, 3 CFR, 1977 Comp., p. 117).

(18) Protection of Wetlands (Executive Order 11990, 3 CFR, 1977 Comp., p. 121).

(19) Environmental Effects Abroad of Major Federal Actions (Executive Order 12114, 3 CFR, 1979 Comp., p. 356).

(20) Invasive Species (Executive Order 13112, 3 CFR, 1999 Comp., p. 159).

(21) AR 200–3, Natural Resources—Land, Forest, and Wildlife Management.

(22) Environmental analysis and documentation required by various state laws.

(23) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(24) Any permitting and licensing procedures required by federal and state law.

(25) Any installation and Army master planning functions and plans.

(26) Any installation management plans, particularly those that deal directly with the environment.

(27) Any stationing and installation planning, force development planning, and materiel acquisition planning.

(28) Environmental Noise Management Program.

(29) Hazardous waste management plans.

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identified in a programmatic EA or EIS prepared by the MATDEV.

(30) Integrated Cultural Resource Management Plan as required by AR 200–4 and DODD 4700.4, Natural Resources Management Program.

(31) Asbestos Management Plans.

(32) Integrated Natural Resource Management Plans, AR 200–3, Natural Resources—Land, Forest, and Wildlife Management, and DODD 4700.4, Natural Resources Management Program.

(33) Environmental Baseline Surveys.

(34) Programmatic Environment, Safety, and Health Evaluation (PESHE) as required by DOD 5000.2-R and DA Pamphlet 70–3, Army Acquisition Procedures, supporting AR 70–1, Acquisition Policy.

(35) The DOD MOU to Foster the Ecosystem Approach signed by CEQ, and DOD, on 15 December 1995; establishing the importance of ''non-listed,'' ''non-game,'' and ''non-protected'' species.

(36) Other requirements (such as health risk assessments), when efficiencies in the overall Army environmental program will result.

(f) *Integration into Army acquisition.* The Army acquisition community will integrate environmental analyses into decision-making, as required in this part ensuring that environmental considerations become an integral part of total program planning and budgeting, PEOs, and Program, Product, and Project Managers integrate the NEPA process early, and acquisition planning and decisions reflect national and Army environmental values and considerations. By integrating pollution prevention and other aspects of any environmental analysis early into the materiel acquisition process, the PEO and PM facilitate the identification of environmental cost drivers at a time when they can be most effectively controlled. NEPA program coordinators should refer to DA Pamphlet 70–3, Army Acquisition Procedures, and the Defense Acquisition Deskbook (DAD) for current specific implementation guidance, procedures, and POCs.

(g) *Relations with local, state, regional, and tribal agencies.* (1) Army installation, agency, or activity environmental officers or planners should establish a continuing relationship with other agencies, including the staffs of adjacent local, state, regional, and tribal governments and agencies. This relationship will promote cooperation and resolution of mutual land use and environment-related problems, and promote the concept of regional ecosystem management as well as general cooperative problem solving. Many of these ''partners'' will have specialized expertise and access to environmental baseline data, which will assist the Army in day-to-day planning as well as NEPA-related issues. MOUs are encouraged to identify areas of mutual interest, establish POCs, identify lines of communication between agencies, and specify procedures to follow in conflict resolution. Additional coordination is available from state and area-wide planning and development agencies. Through this process, the proponent may gain insights on other agencies' approaches to EAs, surveys, and studies applicable to the current proposal. These other agencies would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

(2) In some cases, local, state, regional, or tribal governments or agencies will have sufficient jurisdiction by law or special expertise with respect to reasonable alternatives or significant environmental, social, or economic impacts associated with a proposed action. When appropriate, proponents of an action should determine whether these entities have an interest in becoming a cooperating agency (§ 651.45 (b) and 40 CFR 1501.6). If cooperating agency status is established, a memorandum of agreement is required to document specific expectations, roles, and responsibilities, including analyses to be performed, time schedules, availability of pre-decisional information, and other issues. Cooperating agencies may use their own funds, and the designation of cooperating agency status neither enlarges nor diminishes the decision-making status of any federal or non-federal entities (see CEQ Memorandum for Heads of Federal Agencies entitled ''Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act'' dated 28 July 1999, available from the President's Council on Environmental Quality (CEQ), Executive Office of the President of the U.S.). In determining sufficient jurisdiction or expertise, CEQ regulations can be used as guidance.

(h) *The Army as a cooperating agency.* Often, other agencies take actions that can negatively impact the Army mission. In such cases, the Army may have some special or unique expertise or jurisdiction.

(1) The Army may be a cooperating agency (40 CFR 1501.6) in order to:

(i) Provide information or technical expertise to a lead agency.

(ii) Approve portions of a proposed action.

(iii) Ensure the Army has an opportunity to be involved in an action of another federal agency that will affect the Army.

(iv) Provide review and approval of the portions of EISs and RODs that affect the Army.

(2) Adequacy of an EIS is primarily the responsibility of the lead agency. However, as a cooperating agency with approval authority over portions of a proposal, the Army may adopt an EIS if review concludes the EIS adequately satisfies the Army's comments and suggestions.

(3) If the Army is a major approval authority for the proposed action, the appropriate Army official may sign the ROD prepared by the lead agency, or prepare a separate, more focused ROD. If the Army's approval authority is only a minor aspect of the overall proposal, such as issuing a temporary use permit, the Army need not sign the lead agency's ROD or prepare a separate ROD.

(4) The magnitude of the Army's involvement in the proposal will determine the appropriate level and scope of Army review of NEPA documents. If the Army is a major approval authority or may be severely impacted by the proposal or an alternative, the Army should undertake the same level of review as if it were the lead agency. If the involvement is limited, the review may be substantially less. The lead agency is responsible for overall supervision of the EIS, and the Army will attempt to meet all reasonable time frames imposed by the lead agency.

(5) If an installation (or other Army organization) should become aware of an EIS being prepared by another federal agency in which they may be involved within the discussion of the document, they should notify ASA(I&E) through the chain of command. ASA(I&E) will advise regarding appropriate Army participation as a cooperating agency, which may simply involve local coordination.

§ 651.15 Mitigation and monitoring.

(a) Throughout the environmental analysis process, the proponent will consider mitigation measures to avoid or minimize environmental harm. Mitigation measures include:

(1) Avoiding the impact altogether, by eliminating the action or parts of the action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact; by repairing, rehabilitating, or restoring the adverse effect on the environment.

(4) Reducing or eliminating the impact over time, by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact, by replacing or providing substitute resources or environments. (Examples and further clarification are presented in Appendix C of this part.)

(b) When the analysis proceeds to an EA or EIS, mitigation measures will be clearly assessed and those selected for implementation will be identified in the FNSI or the ROD. The proponent must implement those identified mitigations, because they are commitments made as part of the Army decision. The proponent is responsible for responding to inquiries from the public or other agencies regarding the status of mitigation measures adopted in the NEPA process. The mitigation shall become a line item in the proponent's budget or other funding document, if appropriate, or included in the legal document implementing the action (for example, contracts, leases, or grants). Only those practical mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified. Any mitigation measures selected by the proponent will be clearly outlined in the NEPA decision document, will be budgeted and funded (or funding arranged) by the proponent, and will be identified, with the appropriate fund code, in the EPR (AR 200–1). Mitigations will be monitored through environmental compliance reporting, such as the ISR (AR 200–1) or the Environmental Quality Report. Mitigation measures are identified and funded in accordance with applicable laws, regulations, or other media area requirements.

(c) Based upon the analysis and selection of mitigation measures that reduce environmental impacts until they are no longer significant, an EA may result in a FNSI. If a proponent uses mitigation measures in such a manner, the FNSI must identify these mitigating measures, and they become legally binding and must be accomplished as the project is implemented. If any of these identified mitigation measures do not occur, so that significant adverse environmental effects could reasonably expected to result, the proponent must publish an NOI and prepare an EIS.

(d) Potential mitigation measures that appear practical, and are unobtainable within expected Army resources, or that some other agency (including non-Army agencies) should perform, will be identified in the NEPA analysis to the maximum extent practicable. A number of factors determine what is practical, including military mission, manpower restrictions, cost, institutional barriers, technical feasibility, and public acceptance. Practicality does not necessarily ensure resolution of conflicts among these items, rather it is the degree of conflict that determines practicality. Although mission conflicts are inevitable, they are not necessarily insurmountable; and the proponent should be cautious about declaring all mitigations impractical and carefully consider any manpower requirements. The key point concerning both the manpower and cost constraints is that, unless money is actually budgeted and manpower assigned, the mitigation does not exist. Coordination by the proponent early in the process will be required to allow ample time to get the mitigation activities into the budget cycle. The project cannot be undertaken until all required mitigation efforts are fully resourced, or until the lack of funding and resultant effects, are fully addressed in the NEPA analysis.

(e) Mitigation measures that were considered but rejected, including those that can be accomplished by other agencies, must be discussed, along with the reason for the rejection, within the EA or EIS. If they occur in an EA, their rejection may lead to an EIS, if the resultant unmitigated impacts are significant.

(f) Proponents may request assistance with mitigation from cooperating non-Army agencies, when appropriate. Such assistance is appropriate when the requested agency was a cooperating agency during preparation of a NEPA document, or has the technology, expertise, time, funds, or familiarity with the project or the local ecology necessary to implement the mitigation measure more effectively than the lead agency.

(g) The proponent agency or other appropriate cooperating agency will implement mitigations and other conditions established in the EA or EIS, or commitments made in the FNSI or ROD. Legal documents implementing the action (such as contracts, permits, grants) will specify mitigation measures to be performed. Penalties against a contractor for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(h) A monitoring and enforcement program for any mitigation will be adopted and summarized in the NEPA documentation (see Appendix C of this part for guidelines on implementing such a program). Whether adoption of a monitoring and enforcement program is applicable (40 CFR 1505.2(c)) and whether the specific adopted action requires monitoring (40 CFR 1505.3) may depend on the following:

(1) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited);

(2) The outcome of the mitigation measure is uncertain (for example, new technology);

(3) Major environmental controversy remains associated with the selected alternative; or

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in a failure to meet achievement of requirements (such as adverse effects on federal or state listed endangered or threatened species, important historic or archaeological sites that are either listed or eligible for nomination to the National Register of Historic Places, wilderness areas, wild and scenic rivers, or other public or private protected resources). Proponents must follow local installation environmental office procedures to coordinate with appropriate federal, tribal, state, or local agencies responsible for a particular program to determine what would constitute ''adverse effects.''

(i) Monitoring is an integral part of any mitigation system.

(1) Enforcement monitoring ensures that mitigation is being performed as described in the NEPA documentation, mitigation requirements and penalty clauses are written into any contracts, and required provisions are enforced. The development of an enforcement monitoring program is governed by who will actually perform the mitigation: a contractor, a cooperating agency, or an in-house (Army) lead agency. Detailed guidance is contained in Appendix C of this part. The proponent is ultimately responsible for performing any mitigation activities. All monitoring results will be sent to the installation Environmental Office; in the case of the Army Reserves, the Regional Support Commands (RSCs); and, in the case of the National Guard, the NGB.

(2) Effectiveness monitoring measures the success of the mitigation effort and/or the environmental effect. While quantitative measurements are desired, qualitative measures may be required. The objective is to obtain enough information to judge the effect of the mitigation. In establishing the monitoring system, the responsible agent should coordinate the monitoring with the Environmental Office. Specific steps and guidelines are included in Appendix C of this part.

(j) The monitoring program, in most cases, should be established well before the action begins, particularly when biological variables are being measured and investigated. At this stage, any necessary contracts, funding, and manpower assignments must be initiated. Technical results from the analysis should be summarized by the proponent and coordinated with the installation Environmental Office. Subsequent coordination with the concerned public and other agencies, as arranged through development of the mitigation plan, will be handled through the Environmental Office.

(k) If the mitigations are effective, the monitoring should be continued as long as the mitigations are needed to address impacts of the initial action. If the mitigations are ineffective, the proponent and the responsible group should re-examine the mitigation measures, in consultation with the Environmental Office and appropriate experts, and resolve the inadequacies of the mitigation or monitoring. Professionals with specialized and recognized expertise in the topic or issue, as well as concerned citizens, are essential to the credibility of this review. If a different program is required, then a new system must be established. If ineffective mitigations are identified which were required to reduce impact below significance levels (§ 651.35 (g)), the proponent may be required to publish an NOI and prepare an EIS (paragraph (c) of this section).

(l) Environmental monitoring report. An environmental monitoring report is prepared at one or more points after program or action execution. Its purpose is to determine the accuracy of impact predictions. It can serve as the basis for adjustments in mitigation programs and to adjust impact predictions in future projects. Further guidance and clarification are included in Appendix C of this part.

§ 651.16 Cumulative impacts.

(a) NEPA analyses must assess cumulative effects, which are the impact on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Actions by federal, non-federal agencies, and private parties must be considered (40 CFR 1508.7).

(b) The scoping process should be used to identify possible cumulative impacts. The proponent should also contact appropriate off-post officials, such as tribal, state, county, or local planning officials, to identify other actions that should be considered in the cumulative effects analysis.

(c) A suggested cumulative effects approach is as follows:

(1) Identify the boundary of each resource category. Boundaries may be geographic or temporal. For example, the Air Quality Control Region (AQCR) might be the appropriate boundary for the air quality analysis, while a watershed could be the boundary for the water quality analysis. Depending upon the circumstances, these boundaries could be different and could extend off the installation.

(2) Describe the threshold level of significance for that resource category. For example, a violation of air quality standards within the AQCR would be an appropriate threshold level.

(3) Determine the environmental consequence of the action. The analysis should identify the cause and effect relationships, determine the magnitude and significance of cumulative effects, and identify possible mitigation measures.

§ 651.17 Environmental justice.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, 11 February 1994, 3 CFR, 1994 Comp., p. 859) requires the proponent to determine whether the proposed action will have a disproportionate impact on minority or low-income communities, both off-post and on-post.

Subpart C–Records and Documents

§ 651.18 Introduction.

NEPA documentation will be prepared and published double-sided on recycled paper. The recycled paper symbol should be presented on the inside of document covers.

§ 651.19 Record of environmental consideration.

A Record of Environmental Consideration (REC) is a signed statement submitted with project documentation that briefly documents that an Army action has received environmental review. RECs are prepared for CXs that require them, and for actions covered by existing or previous NEPA documentation. A REC briefly describes the proposed action and timeframe, identifies the proponent and approving official(s), and clearly shows how an action qualifies for a CX, or is already covered in an existing EA or EIS. When used to support a CX, the REC must address the use of screening criteria to ensure that no extraordinary circumstances or situations exist. A REC has no prescribed format, as long as the above information is included. To reduce paperwork, a REC can reference such documents as real estate Environmental Baseline Studies (EBSs) and other documents, as long as they are readily available for review. While a REC may document compliance with the requirements of NEPA, it does not fulfill the requirements of other environmental laws and regulations. Figure 3 illustrates a possible format for the REC as follows:

Record of Environmental Consideration (REC)

To: (Environmental Officer)
From: (Proponent)
Project title:
Breif description:

Anticipated date and/or duration of proposed action: (Month/year)

Reason for using record of environmental consideration (choose one):

a. Adequantely covered in an (EA, EIS) entitled _____, dated _____,

The EA/EIS may be reviewed at _____, (location)

OR,

b. Is categorically excluded under the provisions of CX _____, AR 200-2, appendix A, (and no extraordinary circumstances exist as defined in paragraph 4-3), because

_____

_____

_____

Date Project Proponent

_____

Date Installation Environmental Coordinator

Variation from this format is acceptable provided basic information and approvals are included in any modified document.

Figure 3. Suggested format for Record of Environmental Consideration.

§ 651.20 Environmental assessment.

An EA is intended to assist agency planning and decision-making. While required to assess environmental impacts and evaluate their significance, it is routinely used as a planning document to evaluate environmental impacts, develop alternatives and mitigation measures, and allow for agency and public participation. It:

(a) Briefly provides the decision maker with sufficient evidence and analysis for determining whether a FNSI or an EIS should be prepared.

(b) Assures compliance with NEPA, if an EIS is not required and a CX is inappropriate.

(c) Facilitates preparation of an EIS, if required.

(d) Includes brief discussions of the need for the proposed action, alternatives to the proposed action (NEPA, section 102(2)(e)), environmental impacts, and a listing of persons and agencies consulted (see Subpart E of this part for requirements).

(e) The EA provides the proponent, the public, and the decision maker with sufficient evidence and analysis for determining whether environmental impacts of a proposed action are potentially significant. An EA is substantially less rigorous and costly than an EIS, but requires sufficient detail to identify and ascertain the significance of expected impacts associated with the proposed action and its alternatives. The EA can often provide the required ''hard look'' at the potential environmental effects of an action, program, or policy within 1 to 25 pages, depending upon the nature of the action and project-specific conditions.

§ 651.21 Finding of no significant impact.

A Finding of No Significant Impact (FNSI) is a document that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, that an EIS will not be prepared. The FNSI includes a summary of the EA and notes any related NEPA documentation. If the EA is attached, the FNSI need not repeat any of the EA discussion, but may incorporate it by reference. The draft FNSI will be made available to the public for review and comment for 30 days prior to the initiation of an action, except in special circumstances when the public comment period is reduced to 15 days, as discussed in § 651.14(b)(2)(iii). Following the comment period and review of public comments, the proponent forwards a decision package that includes a comparison of environmental impacts associated with reasonable alternatives, summary of public concerns, revised FNSI (if necessary), and recommendations for the decision maker. The decision maker reviews the package, makes a decision, and signs the FNSI or the NOI (if the FNSI no longer applies). If a FNSI is signed by the decision maker, the action can proceed immediately.

§ 651.22 Notice of intent.

A Notice of Intent (NOI) is a public notice that an EIS will be prepared. The NOI will briefly:

(a) Describe the proposed and alternative actions.

(b) Describe the proposed scoping process, including when and where any public meetings will be held.

(c) State the name and address of the POC who can answer questions on the proposed action and the EIS (see § 651.45(a) and § 651.49 for application).

§ 651.23 Environmental impact statement.

An Environmental Impact statement (EIS) is a detailed written statement required by NEPA for major federal actions significantly affecting the quality of the human environment (42 U.S.C. 4321). A more complete discussion of EIS requirements is presented in Subpart F of this part.

§ 651.24 Supplemental EAs and supplemental EISs.

As detailed in § 651.5(g) and in 40 CFR 1502.9(c), proposed actions may

require review of existing NEPA documentation. If conditions warrant a supplemental document, these documents are processed in the same way as an original EA or EIS. No new scoping is required for a supplemental EIS filed within one year of the filing of the original ROD. If the review indicates no need for a supplement, that determination will be documented in a REC.

§ 651.25 Notice of availability.

The Notice of Availability (NOA) is published by the Army to inform the public and others that a NEPA document is available for review. A NOA will be published in the FR, coordinating with EPA for draft and final EISs (including supplements), for RODs, and for EAs and FNSIs which are of national concern, are unprecedented, or normally require an EIS. EAs and FNSIs of local concern will be made available in accordance with § 651.36. This agency NOA should not be confused with the EPA's notice of availability of weekly receipts (NWR)[3] of EISs.

§ 651.26 Record of decision.

The Record of Decision (ROD) is a concise public document summarizing the findings in the EIS and the basis for the decision. A public ROD is required under the provisions of 40 CFR 1505.2 after completion of an EIS (see § 651.45 (j) for application). The ROD must identify mitigations which were important in supporting decisions, such as those mitigations which reduce otherwise significant impacts, and ensure that appropriate monitoring procedures are implemented (see § 651.15 for application).

§ 651.27 Programmatic NEPA analyses.

These analyses, in the form of an EA or EIS, are useful to examine impacts of actions that are similar in nature or broad in scope. These documents allow the ''tiering'' of future NEPA documentation in cases where future decisions or unknown future conditions preclude complete NEPA analyses in one step. These documents are discussed further in § 651.14(c).

Subpart D—Categorical Exclusions

§ 651.28 Introduction.

Categorical Exclusions (CXs) are categories of actions with no individual or cumulative effect on the human or natural environment, and for which neither an EA nor an EIS is required. The use of a CX is intended to reduce paperwork and eliminate delays in the initiation and completion of proposed actions that have no significant impact.

§ 651.29 Determining when to use a CX (screening criteria).

(a) To use a CX, the proponent must satisfy the following three screening conditions:

(1) The action has not been segmented. Determine that the action has not been segmented to meet the definition of a CX. Segmentation can occur when an action is broken down into small parts in order to avoid the appearance of significance of the total action. An action can be too narrowly defined, minimizing potential impacts in an effort to avoid a higher level of NEPA documentation. The scope of an action must include the consideration of connected, cumulative, and similar actions (see § 651.51(a)).

(2) No exceptional circumstances exist. Determine if the action involves extraordinary circumstances that would preclude the use of a CX (see paragraphs (b) (1) through (14) of this section).

(3) One (or more) CX encompasses the proposed action. Identify a CX (or multiple CXs) that potentially encompasses the proposed action (Appendix B of this part). If no CX is appropriate, and the project is not exempted by statute or emergency provisions, an EA or an EIS must be prepared, before a proposed action may proceed.

(b) Extraordinary circumstances that preclude the use of a CX are:

(1) Reasonable likelihood of significant effects on public health, safety, or the environment.

(2) Reasonable likelihood of significant environmental effects (direct, indirect, and cumulative).

(3) Imposition of uncertain or unique environmental risks.

(4) Greater scope or size than is normal for this category of action.

(5) Reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(6) Releases of petroleum, oils, and lubricants (POL) except from a properly functioning engine or vehicle, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(7) When a review of an action that might otherwise qualify for a Record of Non-applicability (RONA) reveals that air emissions exceed de minimis levels or otherwise that a formal Clean Air Act conformity determination is required.

(8) Reasonable likelihood of violating any federal, state, or local law or requirements imposed for the protection of the environment.

(9) Unresolved effect on environmentally sensitive resources, as defined in paragraph (c) of this section.

(10) Involving effects on the quality of the environment that are likely to be highly controversial.

(11) Involving effects on the environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial.

(12) Establishes a precedent (or makes decisions in principle) for future or subsequent actions that are reasonably likely to have a future significant effect.

(13) Potential for degradation of already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(14) Introduction/employment of unproven technology.

(c) If a proposed action would adversely affect ''environmentally sensitive'' resources, unless the impact has been resolved through another environmental process (e.g., CZMA, NHPA, CWA, etc.) a CX cannot be used (see paragraph (e) of this section). Environmentally sensitive resources include:

(1) Proposed federally listed, threatened, or endangered species or their designated critical habitats.

(2) Properties listed or eligible for listing on the National Register of Historic Places (AR 200–4).

(3) Areas having special designation or recognition such as prime or unique agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); 100-year floodplains; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

(4) Cultural Resources as defined in AR 200–4.

(d) The use of a CX does not relieve the proponent from compliance with other statutes, such as RCRA, or consultations under the Endangered Species Act or the NHPA. Such consultations may be required to determine the applicability of the CX screening criteria.

(e) For those CXs that require a REC, a brief (one to two sentence) presentation of conclusions reached during screening is required in the REC.

[3] This notice is published by the EPA and officially begins the public review period. The NWR is published each Friday, and lists the EISs that were filed the previous week.

This determination can be made using current information and expertise, if available and adequate, or can be derived through conversation, as long as the basis for the determination is included in the REC. Copies of appropriate interagency correspondence can be attached to the REC. Example conclusions regarding screening criteria are as follows:

(1) ''USFWS concurred in informal coordination that E/T species will not be affected''.

(2) ''Corps of Engineers determined action is covered by nationwide general permit''.

(3) ''SHPO concurred with action''.

(4) ''State Department of Natural Resources concurred that no effect to state sensitive species is expected''.

§ 651.30 CX actions.

Types of actions that normally qualify for CX are listed in Appendix B of this part.

§ 651.31 Modification of the CX list.

The Army list of CXs is subject to continual review and modification, in consultation with CEQ. Additional modifications can be implemented through submission, through channels, to ASA (I&E) for consideration and consultation. Subordinate Army headquarters may not modify the CX list through supplements to this part. Upon approval, proposed modifications to the list of CXs will be published in the **Federal Register**, providing an opportunity for public review and comment.

Subpart E—Environmental Assessment

§ 651.32 Introduction.

(a) An EA is intended to facilitate agency planning and informed decision-making, helping proponents and other decision makers understand the potential extent of environmental impacts of a proposed action and its alternatives, and whether those impacts (or cumulative impacts) are significant. The EA can aid in Army compliance with NEPA when no EIS is necessary. An EA will be prepared if a proposed action:

(1) Is not an emergency (§ 651.11(b)).

(2) Is not exempt from (or an exception to) NEPA (§ 651.11(a)).

(3) Does not qualify as a CX (§ 651.11(c)).

(4) Is not adequately covered by existing NEPA analysis and documentation (§ 651.19).

(5) Does not normally require an EIS (§ 651.42).

(b) An EA can be 1 to 25 pages in length and be adequate to meet the requirements of this part, depending upon site-specific circumstances and conditions. Any analysis that exceeds 25 pages in length should be evaluated to consider whether the action and its effects are significant and thus warrant an EIS.

§ 651.33 Actions normally requiring an EA.

The following Army actions normally require an EA, unless they qualify for the use of a CX:

(a) Special field training exercises or test activities in excess of five acres on Army land of a nature or magnitude not within the annual installation training cycle or installation master plan.

(b) Military construction that exceeds five contiguous acres, including contracts for off-post construction.

(c) Changes to established installation land use that generate impacts on the environment.

(d) Alteration projects affecting historically significant structures, archaeological sites, or places listed or eligible for listing on the National Register of Historic Places.

(e) Actions that could cause significant increase in soil erosion, or affect prime or unique farmland (off Army property), wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, prime or unique wildlife habitat, or wild and scenic rivers.

(f) Actions proposed during the life cycle of a weapon system if the action produces a new hazardous or toxic material or results in a new hazardous or toxic waste, and the action is not adequately addressed by existing NEPA documentation. Examples of actions normally requiring an EA during the life cycle include, but are not limited to, testing, production, fielding, and training involving natural resources, and disposal/demilitarization. System design, development, and production actions may require an EA, if such decisions establish precedent (or make decisions, in principle) for future actions with potential environmental effects. Such actions should be carefully considered in cooperation with the development or production contractor or government agency, and NEPA analysis may be required.

(g) Development and approval of installation master plans.

(h) Development and implementation of Integrated Natural Resources Management Plans (INRMPs) (land, forest, fish, and wildlife) and Integrated Cultural Resources Management Plans (ICRMPs).

(i) Actions that take place in, or adversely affect, important wildlife habitats, including wildlife refuges.

(j) Field activities on land not controlled by the military, except those that do not alter land use to substantially change the environment (for example, patrolling activities in a forest). This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground level into the national airspace. It also includes joint air attack training that may require participating aircraft to exceed 250 knots at altitudes below 3000 feet above ground level, and helicopters, at any speed, below 500 feet above ground level.

(k) An action with substantial adverse local or regional effects on energy or water availability. Such impacts can only be adequately identified with input from local agencies and/or citizens.

(l) Production of hazardous or toxic materials.

(m) Changes to established airspace use that generate impacts on the environment or socioeconomic systems, or create a hazard to non-participants.

(n) An installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program/plan.

(o) Acquisition, construction, or alteration of (or space for) a laboratory that will use hazardous chemicals, drugs, or biological or radioactive materials.

(p) An activity that affects a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.

(q) Substantial proposed changes in Army-wide doctrine or policy that potentially have an adverse effect on the environment (40 CFR 1508.18 (b)(1)).

(r) An action that may threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment.

(s) The construction and operation of major new fixed facilities or the substantial commitment of installation natural resources supporting new materiel at the installation.

§ 651.34 EA components.

EAs should be 1 to 25 pages in length, and will include:

(a) Signature (Review and Approval) page.

(b) Purpose and need for the action.

(c) Description of the proposed action.

(d) Alternatives considered. The alternatives considered, including appropriate consideration of the ''No Action'' alternative, the ''Proposed Action,'' and all other appropriate and reasonable alternatives that can be realistically accomplished. In the discussion of alternatives, any criteria

for screening alternatives from full consideration should be presented, and the final disposition of any alternatives that were initially identified should be discussed.

(e) Affected environment. This section must address the general conditions and nature of the affected environment and establish the environmental setting against which environmental effects are evaluated. This should include any relevant general baseline conditions focusing on specific aspects of the environment that may be impacted by the alternatives. EBSs and similar real estate or construction environmental baseline documents, or their equivalent, may be incorporated and/or referenced.

(f) Environmental consequences. Environmental consequences of the proposed action and the alternatives. The document must state and assess the effects (direct, indirect, and cumulative) of the proposed action and its alternatives on the environment, and what practical mitigation is available to minimize these impacts. Discussion and comparison of impacts should provide sufficient analysis to reach a conclusion regarding the significance of the impacts, and is not merely a quantification of facts.

(g) Conclusions regarding the impacts of the proposed action. A clear statement will be provided regarding whether or not the described impacts are significant. If the EA identifies potential significant impacts associated with the proposed action, the conclusion should clearly state that an EIS will be prepared before the proposed action is implemented. If no significant impacts are associated with the project, the conclusion should state that a FNSI will be prepared. Any mitigations that reduce adverse impacts must be clearly presented. If the EA depends upon mitigations to support a resultant FNSI, these mitigations must be clearly identified as a subsection of the Conclusions.

(h) Listing of preparers, and agencies and persons consulted. Copies of correspondence to and from agencies and persons contacted during the preparation of the EA will be available in the administrative record and may be included in the EA as appendices. In addition, the list of analysts/preparers will be presented.

(i) References. These provide bibliographic information for cited sources. Draft documents should not be cited as references without the expressed permission of the proponent of the draft material.

§ 651.35 Decision process.

(a) An EA results in either a FNSI or an NOI to prepare an EIS. Initiation of an NOI to prepare an EIS should occur at any time in the decision process when it is determined that significant effects may occur as a result of the proposed action. The proponent should notify the decision maker of any such determination as soon as possible.

(b) The FNSI is a document (40 CFR 1508.13) that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, an EIS will not be prepared. It summarizes the EA, noting any NEPA documents that are related to, but are not part of, the scope of the EA under consideration. If the EA is attached, the FNSI may incorporate the EA's discussion by reference. The draft FNSI will be made available to the public for review and comment for 30 days prior to the initiation of an action (see § 651.14(b)(2)(iii) for an exception). Following the comment period, the decision maker signs the FNSI, and the action can proceed. It is important that the final FNSI reflect the decision made, the response to public comments, and the basis for the final decision.

(c) The FNSI must contain the following:

(1) The name of the action.

(2) A brief description of the action (including any alternatives considered).

(3) A short discussion of the anticipated environmental effects.

(4) The facts and conclusions that have led to the FNSI.

(5) A deadline and POC for further information or receipt of public comments (see § 651.47).

(d) The FNSI is normally no more than two typewritten pages in length.

(e) The draft FNSI will be made available to the public prior to initiation of the proposed action, unless it is a classified action (see § 651.13 for security exclusions). Draft FNSIs that have national interest should be submitted with the proposed press release, along with a Questions and Answers (Q&A) package, through command channels to ASA(I&E) for approval and subsequent publication in the FR. Draft FNSIs having national interest will be coordinated with OCPA. Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(f) For actions of only regional or local interest, the draft FNSI will be publicized in accordance with § 651.14(b)(2). Distribution of the draft FNSI should include any agencies, organizations, and individuals that have expressed interest in the project, those who may be affected, and others deemed appropriate.

(g) Some FNSIs will require the implementation of mitigation measures to reduce potential impacts below significance levels, thereby eliminating the requirement for an EIS. In such instances, the following steps must be taken:

(1) The EA must be made readily available to the public for review through traditional publication and distribution, and through the World Wide Web (WWW) or similar technology. This distribution must be planned to ensure that all appropriate entities and stakeholders have easy access to the material. Ensuring this availability may necessitate the distribution of printed information at locations that are readily accessible and frequented by those who are affected or interested.

(2) Any identified mitigations must be tracked to ensure implementation, similar to those specified in an EIS and ROD.

(3) The EA analysis procedures must be sufficiently rigorous to identify and analyze impacts that are individually or cumulatively significant.

(h) The proponent is responsible for funding the preparation, staffing, and distribution of the draft FNSI and EA package, and the incorporation of public/agency review and comment. The proponent shall also ensure appropriate public and agency meetings, which may be required to facilitate the NEPA process in completing the EA. The decision maker will approve and sign the EA and FNSI documents. Proponents will ensure that the EA and FNSI, to include drafts, are provided in electronic format to allow for maximum information flow throughout the process.

(i) The proponent should ensure that the decision maker is continuously informed of key findings during the EA process, particularly with respect to potential impacts and controversy related to the proposed action.

§ 651.36 Public involvement.

(a) The involvement of other agencies, organizations, and individuals in the development of EAs and EISs enhances collaborative issue identification and problem solving. Such involvement demonstrates that the Army is committed to open decision-making and builds the necessary community trust that sustains the Army in the long term. Public involvement is mandatory for EISs (see § 651.47 and Appendix D of this part for information on public involvement requirements).

(b) Environmental agencies and the public will be involved to the extent practicable in the preparation of an EA. If the proponent elects to involve the public in the development of an EA, § 651.47 and Appendix D of this part may be used as guidance. When considering the extent practicable of public interaction (40 CFR 1501.4(b)), factors to be weighed include:

(1) Magnitude of the proposed project/action.

(2) Extent of anticipated public interest, based on experience with similar proposals.

(3) Urgency of the proposal.

(4) National security classification.

(5) The presence of minority or economically-disadvantaged populations.

(c) Public involvement must begin early in the proposal development stage, and during preparation of an EA. The direct involvement of agencies with jurisdiction or special expertise is an integral part of impact analysis, and provides information and conclusions for incorporation into EAs. Unclassified documents incorporated by reference into the EA or FNSI are public documents.

(d) Copies of public notices, ''scoping'' letters, EAs, draft FNSIs, FNSIs, and other documents routinely sent to the public will be sent directly to appropriate congressional, state, and district offices.

(e) To ensure early incorporation of the public into the process, a plan to include all interested or affected parties should be developed at the beginning of the analysis and documentation process. Open communication with the public is encouraged as a matter of Army policy, and the degree of public involvement varies. Appropriate public notice of the availability of the completed EA/draft FNSI shall be made (see § 651.35) (see also AR 360–5 (Public Information)). The plan will include the following:

(1) Dissemination of information to local and installation communities.

(2) Invitation and incorporation of public comments on Army actions.

(3) Consultation with appropriate persons and agencies.

(f) Further guidance on public participation requirements (to potentially be used for EAs and EISs, depending on circumstances) is presented in Appendix D of this part.

§ 651.37 Public availability.

Documents incorporated into the EA or FNSI by reference will be available for public review. Where possible, use of public libraries and a list of POCs for supportive documents is encouraged. A depository should be chosen which is open beyond normal business hours. To the extent possible, the WWW should also be used to increase public availability of documents.

§ 651.38 Existing environmental assessments.

EAs are dynamic documents. To ensure that the described setting, actions, and effects remain substantially accurate, the proponent or installation Environmental Officer is encouraged to periodically review existing documentation that is still relevant or supporting current action. If an action is not yet completed, substantial changes in the proposed action may require supplementation, as specified in § 651.5 (g).

§ 651.39 Significance.

(a) If the proposed action may or will result in significant impacts to the environment, an EIS is prepared to provide more comprehensive analyses and conclusions about the impacts. Significant impacts of socioeconomic consequence alone do not merit an EIS.

(b) Significance of impacts is determined by examining both the context and intensity of the proposed action (40 CFR 1508.27). The analysis should establish, by resource category, the threshold at which significance is reached. For example, an action that would violate existing pollution standards; cause water, air, noise, soil, or underground pollution; impair visibility for substantial periods; or cause irreparable harm to animal or plant life could be determined significant. Significant beneficial effects also occur and must be addressed, if applicable.

(c) The proponent should use appropriate methods to identify and ascertain the ''significance'' of impacts. The use of simple analytical tools, which are subject to independent peer review, fully documented, and available to the public, is encouraged.[4] In particular, where impacts are unknown or are suspected to be of public interest, public involvement should be initiated early in the EA (scoping) process.

Subpart F—Environmental Impact Statement

§ 651.40 Introduction.

(a) An EIS is a public document designed to ensure that NEPA policies and goals are incorporated early into the programs and actions of federal agencies. An EIS is intended to provide a full, open, and balanced discussion of significant environmental impacts that may result from a proposed action and alternatives, allowing public review and comment on the proposal and providing a basis for informed decision-making.

(b) The NEPA process should support sound, informed, and timely (early) decision-making; not produce encyclopedic documents. CEQ guidance (40 CFR 1502.7) should be followed, establishing a page limit of 150 pages (300 pages for complex projects). To the extent practicable, EISs will ''incorporate by reference'' any material that is reasonably available for inspection by potentially interested persons within the time allowed for comment. The incorporated material shall be cited in the EIS and its content will be briefly described. Material based on proprietary data, that is itself not available for review and comment, shall not be incorporated by reference.

§ 651.41 Conditions requiring an EIS.

An EIS is required when a proponent, preparer, or approving authority determines that the proposed action has the potential to:

(a) Significantly affect environmental quality, or public health or safety.

(b) Significantly affect historic (listed or eligible for listing in the National Register of Historic Places, maintained by the National Park Service, Department of Interior), or cultural, archaeological, or scientific resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, or aquifers.

(c) Significantly impact prime and unique farmlands located off-post, wetlands, floodplains, coastal zones, or ecologically important areas, or other areas of unique or critical environmental sensitivity.

(d) Result in significant or uncertain environmental effects, or unique or unknown environmental risks.

(e) Significantly affect a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.

(f) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(g) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(h) Involve the production, storage, transportation, use, treatment, and disposal of hazardous or toxic materials

[4] EIFS is one such Army system for evaluating regional economic impacts under NEPA. This system is mandated, as Army policy, for use in NEPA analyses. Other similar tools may be mandated for use in the Army, and will be documented in guidance published pursuant to this part.

that may have significant environmental impact.

(i) Be highly controversial from an environmental standpoint.

(j) Cause loss or destruction of significant scientific, cultural, or historical resources.

§ 651.42 Actions normally requiring an EIS.

The following actions normally require an EIS:

(a) Significant expansion of a military facility or installation.

(b) Construction of facilities that have a significant effect on wetlands, coastal zones, or other areas of critical environmental concern.

(c) The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances that have the potential to cause significant environmental impact.

(d) Land acquisition, leasing, or other actions that may lead to significant changes in land use.

(e) Realignment or stationing of a brigade or larger table of organization equipment (TOE) unit during peacetime (except where the only significant impacts are socioeconomic, with no significant biophysical environmental impact).

(f) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

(g) Major changes in the mission or facilities either affecting environmentally sensitive resources (see § 651.29(c)) or causing significant environmental impact (see § 651.39).

§ 651.43 Format of the EIS.

The EIS should not exceed 150 pages in length (300 pages for very complex proposals), and must contain the following (detailed content is discussed in Appendix E of this part):

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for the action.

(e) Alternatives considered, including proposed action and no-action alternative.

(f) Affected environment (baseline conditions) that may be impacted.

(g) Environmental and socioeconomic consequences.

(h) List of preparers.

(i) Distribution list.

(j) Index.

(k) Appendices (as appropriate).

§ 651.44 Incomplete information.

When the proposed action will have significant adverse effects on the human environment, and there is incomplete or unavailable information, the proponent will ensure that the EIS addresses the issue as follows:

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the Army will include the information in the EIS.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known (for example, the means for obtaining it are beyond the state of the art), the proponent will include in the EIS:

(1) A statement that such information is incomplete or unavailable.

(2) A statement of the relevance of the incomplete or unavailable information to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(4) An evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

§ 651.45 Steps in preparing and processing an EIS.

(a) *NOI.* The NOI initiates the formal scoping process and is prepared by the proponent.

(1) Prior to preparing an EIS, an NOI will be published in the FR and in newspapers with appropriate or general circulation in the areas potentially affected by the proposed action. The OCLL will be notified by the ARSTAF proponent of pending EISs so that congressional coordination may be effected. After the NOI is published in the FR, copies of the notice may also be distributed to agencies, organizations, and individuals, as the responsible official deems appropriate.

(2) The NOI transmittal package includes the NOI, the press release, information for Members of Congress, memorandum for correspondents, and a ''questions and answers'' (Q&A) package. The NOI shall clearly state the proposed action and alternatives, and state why the action may have unknown and/or significant environmental impacts.

(3) The proponent forwards the NOI and the transmittal package to the appropriate HQDA (ARSTAF) proponent for coordination and staffing prior to publication. The ARSTAF proponent will coordinate the NOI with HQDA (ODEP), OCLL, TJAG, OGC, OCPA, relevant MACOMs, and others). Only the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA(ESOH)) can authorize release of an NOI to the FR for publication, unless that authority has been delegated. A cover letter (similar to Figure 5 in § 651.46) will accompany the NOI. An example NOI is shown in Figure 6 in § 651.46.

(b) *Lead and cooperating agency determination.* As soon as possible after the decision is made to prepare an EIS, the proponent will contact appropriate federal, tribal, state, and local agencies to identify lead or cooperating agency responsibilities concerning EIS preparation. At this point, a public affairs plan must be developed. In the case of State ARNG actions that have federal funding, the NGB will be the lead agency for the purpose of federal compliance with NEPA. The State may be either a joint lead or a cooperating agency, as determined by NGB.

(c) *Scoping.* The proponent will begin the scoping process described in § 651.48. Portions of the scoping process may take place prior to publication of the NOI.

(d) *DEIS preparation and processing.* Prior to publication of a DEIS, the proponent can prepare a PDEIS, allowing for internal organization and the resolution of internal Army consideration, prior to a formal request for comments.

(1) *PDEIS.* Based on information obtained and decisions made during the scoping process, the proponent may prepare the PDEIS. To expedite headquarters review, a summary document is also required to present the purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring. This summary will be forwarded, through the chain of command, to ODEP, the DASA(ESOH), and other interested offices for review and comment. If requested by these offices, a draft PDEIS can be provided following review of the summary. The PDEIS is not normally made available to the public and should be stamped ''For Internal Use Only-Deliberative Process.''

(2) *DEIS.* The Army proponent will advise the DEIS preparer of the number of copies to be forwarded for final HQDA review and those for filing with the EPA. Distribution may include interested congressional delegations and committees, governors, national environmental organizations, the DOD and federal agency headquarters, and

other selected entities. The Army proponent will finalize the FR NOA, the proposed news release, and the EPA filing letter for signature of the DASA(ESOH). A revised process summary of the contents (purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring) will accompany the DEIS to HQDA for review and comment. If the action has been delegated by the ASA(I&E), only the process summary is required, unless the DEIS is requested by HQDA.

(i) When the DEIS has been formally approved, the preparer can distribute the DEIS to the remainder of the distribution list. The DEIS must be distributed prior to, or simultaneously with, filing with EPA. The list includes federal, state, regional, and local agencies, private citizens, and local organizations. The EPA will publish the NOA in the FR. The 45-day comment period begins on the date of the EPA notice in the FR.

(ii) Following approval, the proponent will forward five copies of the DEIS to EPA for filing and notice in the FR; publication of EPA's NWR commences the public comment period. The proponent will distribute the DEIS prior to, or simultaneously with, filing with EPA. Distribution will include appropriate federal, state, regional, and local agencies; Native American tribes; and organizations and private citizens who have expressed interest in the proposed action.

(iii) For proposed actions that are environmentally controversial, or of national interest, the OCLL shall be notified of the pending action so that appropriate congressional coordination may be effected. The OCPA will coordinate public announcements through its chain of command. Proponents will ensure that the DEIS and subsequent NEPA documents are provided in electronic format to allow for maximum information flow throughout the process.

(e) *Public review of DEIS.* The DEIS public comment period will be no less than 45 days. If the statement is unusually long, a summary of the DEIS may be circulated, with an attached list of locations where the entire DEIS may be reviewed (for example, local public libraries). Distribution of the complete DEIS should be accompanied by the announcement of availability in established newspapers of major circulation, and must include the following:

(1) Any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate federal, state, or local agency authorized to develop and enforce environmental standards.

(2) The applicant, if the proposed action involves any application of proposal for the use of Army resources.

(3) Any person, organization, or agency requesting the entire DEIS.

(4) Any Indian tribes, Native Alaskan organizations, or Native Hawaiian organizations potentially impacted by the proposed action.

(5) Chairs/co-chairs of any existing citizen advisory groups (for example, Restoration Advisory Boards).

(f) *Public meetings or hearings.* Public meetings or hearings on the DEIS will be held in accordance with the criteria established in 40 CFR 1506.6(c) and (d) or for any other reason the proponent deems appropriate. News releases should be prepared and issued to publicize the meetings or hearings at least 15 days prior to the meeting.

(g) *Response to comments.* Comments will be incorporated in the DEIS by modification of the text and/or written explanation. Where possible, similar comments will be grouped for a common response. The preparer or a higher authority may make individual response, if considered desirable.

(h) *The FEIS.* If the changes to the DEIS are exclusively clarifications or minor factual corrections, a document consisting of only the DEIS comments, responses to the comments, and errata sheets may be prepared and circulated. If such an abbreviated FEIS is anticipated, the DEIS should contain a statement advising reviewers to keep the document so they will have a complete set of ''final'' documents. The final EIS to be filed with EPA will consist of a complete document containing a new cover sheet, the errata sheets, comments and responses, and the text of the draft EIS. Coordination, approval, filing, and public notice of an abbreviated FEIS are the same as for a draft DEIS. If extensive modifications are warranted, the proponent will prepare a new, complete FEIS. Preparation, coordination, approval, filing, and public notice of the FEIS are the same as the process outlined for the DEIS. The FEIS distribution must include any person, organization, or agency that submitted substantive comments on the DEIS. One copy (electronic) of the FEIS will be forwarded to ODEP. The FEIS will clearly identify the Army's preferred alternative unless prohibited by law.

(i) *Decision.* No decision will be made on a proposed action until 30 days after EPA has published the NWR of the FEIS in the FR, or 90 days after the NWR of the DEIS, whichever is later. EPA publishes NWRs weekly. Those NWRs ready for EPA by close of business Friday are published in the next Friday's issue of the FR.

(j) *ROD.* The ROD documents the decision made and the basis for that decision.

(1) The proponent will prepare a ROD for the decision maker's signature, which will:

(i) Clearly state the decision by describing it in sufficient detail to address the significant issues and ensure necessary long-term monitoring and execution.

(ii) Identify all alternatives considered by the Army in reaching its decision, specifying the environmentally preferred alternative(s). The Army will discuss preferences among alternatives based on relevant factors including environmental, economic, and technical considerations and agency statutory missions.

(iii) Identify and discuss all such factors, including any essential considerations of national policy that were balanced by the Army in making its decision. Because economic and technical analyses are balanced with environmental analysis, the agency preferred alternative will not necessarily be the environmentally preferred alternative.

(iv) Discuss how those considerations entered into the final decision.

(v) State whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why they were not.

(vi) Identify or incorporate by reference the mitigation measures that were incorporated into the decision.

(2) Implementation of the decision may begin immediately after approval of the ROD.

(3) The proponent will prepare an NOA to be published in the FR by the HQDA proponent, following congressional notification. Processing and approval of the NOA is the same as for an NOI.

(4) RODs will be distributed to agencies with authority or oversight over aspects of the proposal, cooperating agencies, appropriate congressional, state, and district offices, all parties that are directly affected, and others upon request.

(5) One electronic copy of the ROD will be forwarded to ODEP.

(6) A monitoring and enforcement program will be adopted and summarized for any mitigation (see Appendix C of this part).

(k) *Pre-decision referrals.* 40 CFR part 1504 specifies procedures to resolve federal agency disagreements on the

environmental effects of a proposed action. Pre-decision referrals apply to interagency disagreement on a proposed action's potential unsatisfactory effects.

(l) *Changes during preparation.* If there are substantial changes in the proposed action, or significant new information relevant to environmental concerns during the proposed action's planning process, the proponent will prepare revisions or a supplement to any environmental document or prepare new documentation as necessary.

(m) *Mitigation.* All measures planned to minimize or mitigate expected significant environmental impacts will be identified in the EIS and the ROD. Implementation of the mitigation plan is the responsibility of the proponent (see Appendix C of this part). The proponent will make available to the public, upon request, the status and results of mitigation measures associated with the proposed action. For weapon system acquisition programs, the proponent will coordinate with the appropriate responsible parties before identifying potential mitigations in the EIS/ROD.

(n) *Implementing the decision.* The proponent will provide for monitoring to assure that decisions are carried out, particularly in controversial cases or environmentally sensitive areas (Appendix C of this part). Mitigation and other conditions that have been identified in the EIS, or during its review and comment period, and made part of the decision (and ROD), will be implemented by the lead agency or other appropriate consenting agency. The proponent will:

(1) Include appropriate conditions in grants, permits, or other approvals.

(2) Ensure that the proponent's project budget includes provisions for mitigations.

(3) Upon request, inform cooperating or commenting agencies on the progress in carrying out adopted mitigation measures that they have proposed and that were adopted by the agency making the decision.

(4) Upon request, make the results of relevant monitoring available to the public and Congress.

(5) Make results of relevant monitoring available to citizens advisory groups, and others that expressed such interest during the EIS process.

§ 651.46 Existing EISs.

A newly proposed action must be the subject of a separate EIS. The proponent may extract and revise the existing environmental documents in such a way as to bring them completely up to date, in light of the new proposals. Such a revised EIS will be prepared and processed entirely under the provisions of this part. If an EIS of another agency is adopted, it must be processed in accordance with 40 CFR 1506.3. Figures 4 through 8 to Subpart F of part 651 follow:

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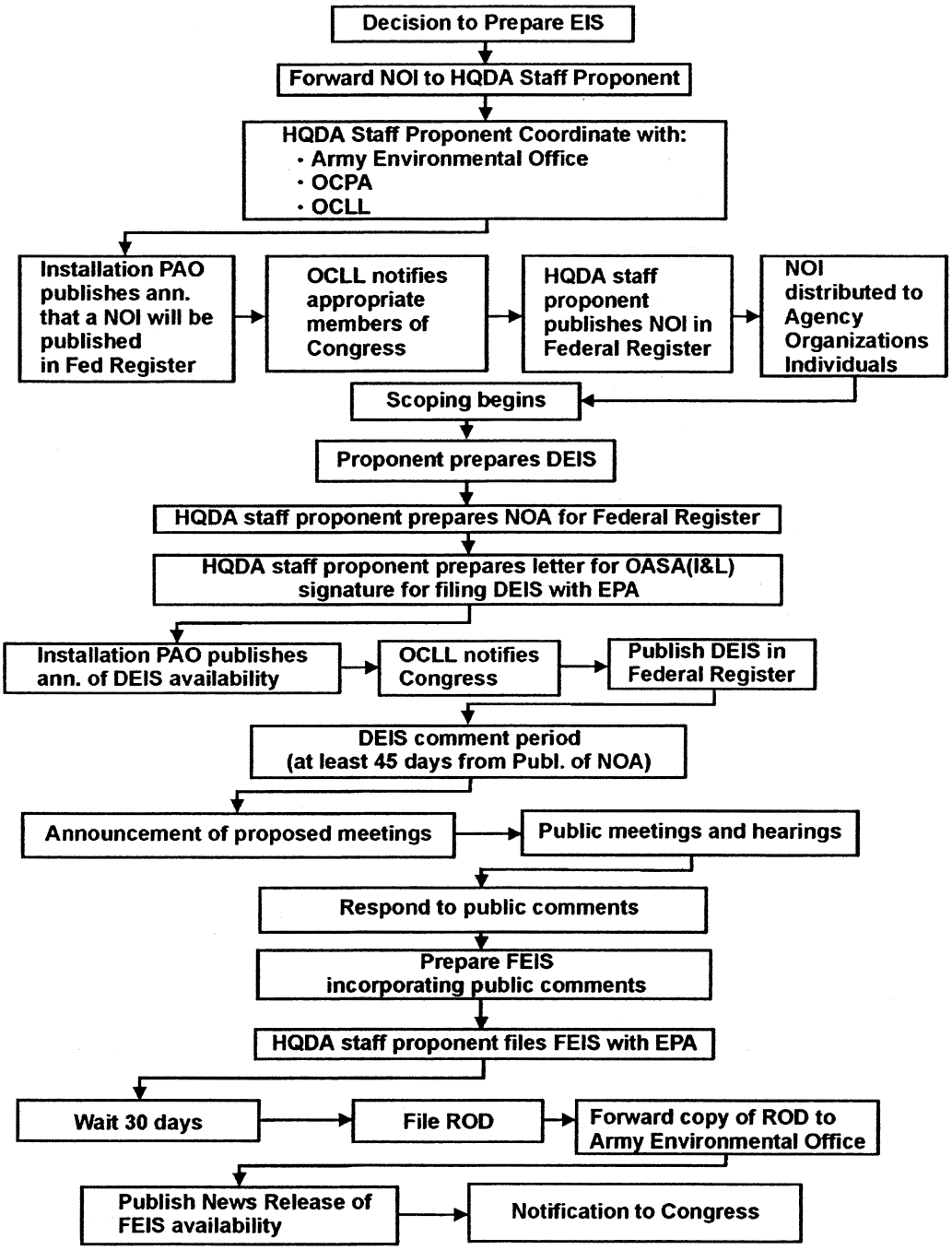

Figure 4. Steps in preparing and processing an environmental impact statement.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

January 14, 1999

Director
Office of the Federal Register
National Archives and Records
Administration
Washington, D. C. 20408

Dear Sir:

The enclosed notice of intent (NOI) to prepare an Environmental Impact Statement for the Fort Sill Real Property Master Plan is submitted for publication in the Notice section of the Federal Register.

Please publish this NOI in the earliest possible edition of the Federal Register. This notice is required for the Department of the Army to perform its military mission and to comply with the National Environmental Policy Act and the President's Council on Environmental Quality regulations.

To confirm publication date of this notice or for further information, please contact Mr. Greg Brewer at (703) 692-9220.

Please bill this to charge code 3710-08-M.

Sincerely,

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I,L&E)

Enclosure

Figure 5. Sample Notice of Intent Transmittal Letter.

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent to Prepare a Programmatic Environmental Impact Statement for the Real Property Master Plan, Fort Sill, Okla.

AGENCY: Department of the Army, DOD

ACTION: Notice of Intent

SUMMARY: This announced the intention of the U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Okla., to prepare an Environmental Impact Statement (EIS) in support of revisions to the installations' Real Property Master Plan (RPMP). The purpose is to evaluate the environmental impacts associated with the RPMP's implementation.

ADDRESSES: Written comments may be forwarded to the U.S. Army Corps of Engineers, ATTN: CESWT-PE-E (J. Randolph), P.O. Box 61, Tulsa, Okla. 74121-0061.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Kerr, Directorate of Environmental Quality, U.S. Army Field Artillery Center and Fort Sill, at (580) 442-3409.

SUPPLEMENTARY INFORMATION: The Fort Sill RPMP has the potential to significantly impact certain natural, economic, social, and cultural resources of the Fort Sill community. The study area for environmental analysis will be the entire Fort Sill installation. The objective is to provide a comprehensive and programmatic EIS that will serve as a planning tool, a public information source, and a reference for mitigation tracking.

Alternatives may consist of alternative locations for specific projects, partial implementation of the specific project, or other modifications of the specific project. The alternatives will be developed during preparation of the Draft EIS (DEIS) as a result of pubic input and of environmental analysis of the proposals within the plan.

SIGNIFICANT ISSUES: The Fort Sill reservation contains approximately 94,221 acres of land. Some of this land serves as potential habitat for protected species of wildlife. Of the areas within the installation that have been surveyed to date for cultural resources, 832 properties have been identified and recorded. Nearly all of the current and proposed RPMP projects are sited with the 6,015 acre cantonment area, where the majority of the installation's historic buildings are located.

The significant issues the EIS will analyze will include the following:

1. Development of a large deployment marshaling area near an existing railhead facility; Whereby, new railroad tracks, loading docks, switching facilities, hardstand areas, and fencing would be developed.

2. Redesignation of land use: Whereby, land use zoning would be redesignated to provide for the construction of new and expansion of existing motor pool areas.

3. Probably construction projects: Whereby, the following projects would be complete: (1) new multiple launch rocket system (MLRS) range firing points in the training areas; (2) a liquid fuel facility; (3) a unit movements facility; and (4) a contingency warehouse.

Public scoping meetings will be held in the vicinity of Fort Sill to facilitate input to the EIS process by citizens and organizations. The date and time of these meetings will be announced in general media and will be at times and locations convenient to the public. To be considered in the Draft EIS, comments and suggestions should be received no later than 15 days following the public scoping meeting.

DATED: January 14, 1999

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Figure 6. Sample of Notice of Intent.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

March 25, 1999

Director
Office of Federal Activities
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D. C. 20044

Dear Sir:

Enclosed are five copies of the Draft Environmental Impact Statement for the Disposal and Reuse of the Military Ocean Terminal, Bayonne, New Jersey.

These copies are forwarded for filing in accordance with the President's Council on Environmental Quality regulations for implementing the provisions of the national Environmental Policy Act (40 CFR, Parts 1500-1508).

The point of contact for this action is Ms. Theresa Persick-Arnold at (703) 697-0216.

Sincerely,

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Enclosures

Figure 7. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Environmental Protection Agency.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

March 25, 1999

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE (ENVIRONMENTAL SECURITY)

SUBJECT: Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of the Military Ocean Terminal, Bayonne (MOTBY), New Jersey

In accordance with Department of Defense Instruction 4715.9, Environmental Planning and Analysis, enclosed is a copy of the NOA of the DEIS on the disposal and reuse of MOTBY.

Point of contact for this action is Ms. Theresa Persick-Arnold at 697-0216.

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Enclosure

Figure 8. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Office of the Secretary of Defense

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Subpart G—Public Involvement and the Scoping Process

§ 651.47 Public involvement.

(a) As a matter of Army policy, public involvement is required for all EISs, and is strongly encouraged for all Army actions, including EAs. The requirement (40 CFR 1506.6) for public involvement recognizes that all potentially interested or affected parties will be involved, when practicable, whenever analyzing environmental considerations. This requirement can be met at the very beginning of the process by developing a plan to include all affected parties and implementing the plan with appropriate adjustments as it proceeds (AR 360–5). The plan will include the following:

(1) Information dissemination to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. The dissemination of this information will be based on the needs and desires of the local communities.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, tribal, and federal government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above. These two-way channels will be dynamic in nature, and should be updated regularly to reflect the needs of the local community.

(4) Public affairs officers at all levels will be kept informed.

(b) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(c) Proponents will invite public involvement in the review and comment of EAs and draft FNSIs (40 CFR 1506.6).

(d) Persons and agencies to be consulted include the following:

(1) Municipal, township, and county elected and appointed officials.

(2) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(3) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(4) Members of existing citizen advisory groups, such as Restoration Advisory Boards and Citizen Advisory Commissions.

(5) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization, such as farmers and ranchers, homeowners, small business owners, minority communities and disadvantaged communities, and tribal governments in accordance with White House Memorandum on Government to Government Relations with Native American Tribal Governments (April 29, 1994).

(6) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Izaak Walton League, Sierra Club, and the Audubon Society).

(7) Any person or group that has specifically requested involvement in the specific action or similar actions.

(e) The public involvement processes and procedures through which participation may be solicited include the following:

(1) Direct individual contact. Such interaction can identify persons and their opinions and initial positions, affecting the scope of issues that the EIS must address. Such limited contact may satisfy public involvement requirements when the expected significance and controversy of environmental effects is very limited.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(4) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(f) The meetings described in paragraph (e) of this section should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent, as described in paragraph (e) of this section.

(g) Public surveys or polls may be performed to identify public opinion of a proposed action, as appropriate (AR 335–15).

§ 651.48 Scoping process.

(a) The scoping process (40 CFR 1501.7) is intended to aid in determining the scope of the analyses and significant issues related to the proposed action. The process requires appropriate public participation immediately following publication of the NOI in the FR. It is important to note that scoping is not synonymous with a public meeting. The Army policy is that EISs for legislative proposals significantly affecting the environment will go through scoping unless extenuating circumstances make it impractical. In some cases, the scoping process may be useful in the preparation of EAs and should be employed when it is useful.

(b) The scoping process identifies relevant issues related to a proposed action through the involvement of all potentially interested or affected parties (affected federal, state, and local agencies; recognized Indian tribes; interest groups, and other interested persons) in the environmental analysis and documentation. This process should:

(1) Eliminate issues from detailed consideration which are not significant, or which have been covered by prior environmental review; and

(2) Make the analysis and documentation more efficient by providing focus to the effort. Proper scoping identifies reasonable alternatives and the information needed for their evaluation, thereby increasing public confidence in the Army decisionmaking process.

(c) Proper scoping will reduce both costs and time required for an EA or EIS. This is done through the documentation of all potential impacts and the focus of detailed consideration on those aspects of the action which are potentially significant or controversial. To assist in this process the Army will use the Environmental Impact Computer System (EICS) starting in Fiscal Year (FY) 04, as appropriate. This system will serve to structure all three stages of the scoping process (§ 651.49, 651.50, and 651.51) and provide focus on those actions that are important and of interest to the public. While these discussions focus on EIS preparation and documents to support that process, the three phases also apply if scoping is used for an EA. If used in the preparation of an EA, scoping, and documents to support that process, can be modified and adopted to ensure efficient public iteration and input to the decision-making process.

(d) When the planning for a project or action indicates the need for an EIS, the proponent initiates the scoping process to identify the range of actions, alternatives, and impacts for consideration in the EIS (40 CFR 1508.25). The extent of the scoping process (including public involvement) will depend upon:

(1) The size and type of the proposed action.

(2) Whether the proposed action is of regional or national interest.

(3) Degree of any associated environmental controversy.

(4) Importance of the affected environmental parameters.

(5) Significance of any effects on them.

(6) Extent of prior environmental review.

(7) Involvement of any substantive time limits.

(8) Requirements by other laws for environmental review.

(e) The proponent may incorporate scoping in the public involvement (or environmental review) process of other requirements, such as an EA. In such cases, the extent of incorporation is at the discretion of the proponent, working with the affected Army organization or installation. Such integration is encouraged.

(f) Scoping procedures fall into preliminary, public interaction, and final phases. These phases are discussed in § 651.49, § 651.50, and § 651.51, respectively.

§ 651.49 Preliminary phase.

In the preliminary phase, the proponent agency or office identifies, as early as possible, how it will accomplish scoping and with whose involvement. Key points will be identified or briefly summarized by the proponent, as appropriate, in the NOI, which will:

(a) Identify the significant issues to be analyzed in the EIS.

(b) Identify the office or person responsible for matters related to the

scoping process. If they are not the same as the proponent of the action, that distinction will be made.

(c) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5 and 1501.6).

(d) Identify the method by which the agency will invite participation of affected parties, and identify a tentative list of the affected parties to be notified. A key part of this preliminary identification is to solicit input regarding other parties who would be interested in the proposed project or affected by it.

(e) Identify the proposed method for accomplishing the scoping procedure.

(f) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decisionmaking schedule including:

(1) The scoping process itself.

(2) Collection or analysis of environmental data, including required studies.

(3) Preparation of draft and final EISs (DEISs and FEISs), and associated review periods.

(4) Filing of the ROD.

(5) Taking the action.

(6) For a programmatic EIS, preparation of a general expected schedule for future specific implementing (tiered) actions that will involve separate environmental analysis.

(g) If applicable, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

§ 651.50 Public interaction phase.

(a) During this portion of the process, the proponent will invite comments from all affected parties and respondents to the NOI to assist in developing issues for detailed discussion in the EIS. Assistance in identifying possible participants is available from the ODEP.

(b) In addition to the affected parties identified in paragraph (a) of this section, participants should include the following:

(1) Technical representatives of the proponent. Such persons must be able to describe the technical aspects of the proposed action and alternatives to other participants.

(2) One or more representatives of any Army-contracted consulting firm, if one has been retained to participate in writing the EIS or providing reports that the Army will use to create substantial portions of the EIS.

(3) Experts in various environmental disciplines, in any technical area where foreseen impacts are not already represented among the other scoping participants.

(c) In all cases, the participants will be provided with information developed during the preliminary phase and with as much of the following information that may be available:

(1) A brief description of the environment at the affected location. When descriptions for a specific location are not available, general descriptions of the probable environmental effects will be provided. This will also address the extent to which the environment has been modified or affected in the past.

(2) A description of the proposed alternatives. The description will be sufficiently detailed to enable evaluation of the range of impacts that may be caused by the proposed action and alternatives. The amount of detail that is sufficient will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be familiar.

(3) A tentative identification of ''any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration'' (40 CFR 1501.7(a)(5)).

(4) Any additional scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(d) The public involvement should begin with the NOI to publish an EIS. The NOI may indicate when and where a scoping meeting will take place and who to contact to receive preliminary information. The scoping meeting is an informal public meeting, and initiates a continuous scoping process, allowing the Army to scope the action and the impacts of alternatives. It is a working session where the gathering and evaluation of information relating to potential environmental impacts can be initiated.

(e) Starting with this information (paragraph (d) of this section), the person conducting the scoping process will use input from any of the involved or affected parties. This will aid in developing the conclusions. The proponent determines the final scope of the EIS. If the proponent chooses not to require detailed treatment of significant issues or factors in the EIS, in spite of relevant technical or scientific objections by any participant, the proponent will clearly identify (in the environmental consequences section of the EIS) the criteria that were used to eliminate such factors.

§ 651.51 The final phase.

(a) The initial scope of the DEIS is determined by the proponent during and after the public interaction phase of the process. Detailed analysis should focus on significant issues (40 CFR 1501.7(a)(2)). To determine the appropriate scope, the proponent must consider three categories of actions, alternatives, and impacts.

(1) The three categories of actions (other than unconnected single actions) are as follows:

(i) Connected actions are those that are closely related and should be discussed in the same impact statement. Actions are connected if they automatically trigger other actions that may require EISs, cannot or will not proceed unless other actions are previously or simultaneously taken, are interdependent parts of a larger action, and depend on the larger action for their justification.

(ii) Cumulative actions are those that, when viewed with other past and proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.

(iii) Similar actions are those that have similarities which provide a basis for evaluating their environmental consequences together, such as common timing or geography, and may be analyzed in the EIS. Agencies should do so when the best way to assess such actions is to treat them in a single EIS.

(2) The three categories of alternatives are as follows:

(i) No action.

(ii) Other reasonable courses of action.

(iii) Mitigation measures (not in the proposed action).

(3) The three categories of impacts are as follows:

(i) Direct.

(ii) Indirect.

(iii) Cumulative.

(4) The proponent can also identify any public EAs and EISs, prepared by the Army or another federal agency, related to, but not part of, the EIS under consideration (40 CFR 1501.7(a)(5)). Assignments for the preparation of the EIS among the lead and any cooperating agencies can be identified, with the lead agency retaining responsibility for the statement (40 CFR 1501.7(a)(4)); along with the identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS (40 CFR 1501.7(a)(6)).

(b) The identification and elimination of issues that are insignificant, non-controversial, or covered by prior environmental review can narrow the

analysis to remaining issues and their significance through reference to their coverage elsewhere (40 CFR 1501.7(a)(3)).

(c) As part of the scoping process, the lead agency may:

(1) Set time limits, as provided in § 651.14(b), if they were not already indicated in the preliminary phase.

(2) Prescribe overall page limits for the EIS in accordance with the CEQ regulations that emphasize conciseness.

(d) All determinations reached by the proponent during the scoping process will be clearly conveyed to the preparers of the EIS in a Scope of Statement. The Scope of Statement will be made available to participants in the scoping process and to other interested parties upon request. Any scientific or technical conflicts that arise between the proponent and scoping participants, cooperating agencies, other federal agencies, or preparers will be identified during the scoping process and resolved or discussed by the proponent in the DEIS.

§ 651.52 Aids to information gathering.

The proponent may use or develop graphic or other innovative methods to aid information gathering, presentation, and transfer during the three scoping phases. These include methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and organizing determinations on scope for use during preparation of the DEIS. The use of the World Wide Web (WWW) for these purposes is encouraged. Suggested uses include the implementation of a continuous scoping process, facilitating ''virtual'' public participation, as well as the dissemination of analyses and information as they evolve.

§ 651.53 Modifications of the scoping process.

(a) If a lengthy period exists between a decision to prepare an EIS and the time of preparation, the proponent will initiate the NOI at a reasonable time in advance of preparation of the DEIS. The NOI will state any tentative conclusions regarding the scope of the EIS made prior to publication of the NOI. Reasonable time for public participation will be allowed before the proponent makes any final decisions or commitments on the EIS.

(b) The proponent of a proposed action may use scoping during preparation of environmental review documents other than an EIS, if desired. In such cases, the proponent may use these procedures or may develop modified procedures, as needed.

Subpart H—Environmental Effects of Major Army Action Abroad

§ 651.54 Introduction.

(a) Protection of the environment is an Army priority, no matter where the Army actions are undertaken. The Army is committed to pursuing an active role in addressing environmental quality issues in Army relations with neighboring communities and assuring that consideration of the environment is an integral part of all decisions. This section assigns responsibilities for review of environmental effects abroad of major Army actions, as required by Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979, 3 CFR, 1979 Comp.,p.356. This section applies to HQDA and Army agencies' actions that would significantly affect the quality of the human environment outside the United States.

(b) Executive Order 12114 and DODD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions (planned currently to be replaced by a DODI, Analyzing Defense Actions With the Potential for Significant Impacts Outside the United States) provide guidance for analyzing the environmental impacts of Army actions abroad and in the global commons. Army components will, consistent with diplomatic factors (including applicable Status of Forces Agreements (SOFAs) and stationing agreements), national security considerations, and difficulties of obtaining information, document the review of potential environmental impacts of Army actions abroad and in the global commons as set forth in DODD 6050.7 (or DODI upon publication). The analysis and documentation of potential environmental impacts of Army actions abroad and in the global commons should, to the maximum extent possible, be incorporated into existing decision-making processes; planning for military exercises, training plans, and military operations.

§ 651.55 Categorical exclusions.

The list of CXs in Appendix B of this part may be used in reviewing potential environmental impacts of major actions abroad and in the global commons, in accordance with DODD 6050.7 (or DODI upon publication) and Executive Order 12114, section 2–5(c).

§ 651.56 Responsibilities.

(a) The ASA(I&E) will:

(1) Serve as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintain liaison with the DUSD(IE) on matters concerning Executive Order 12114, DODD 6050.7, and this part.

(3) Coordinate actions with other Secretariat offices as appropriate.

(b) The DEP will:

(1) Serve as ARSTAF proponent for implementation of Executive Order 12114, DODD 6050.7, and this part.

(2) Apply this part when planning and executing overseas actions, where appropriate in light of applicable statutes and SOFAs.

(c) The DCSOPS will:

(1) Serve as the focal point on the ARSTAF for integrating environmental considerations required by Executive Order 12114 into Army plans and activities. Emphasis will be placed on those actions reasonably expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consult with the Office of Foreign Military Rights Affairs of the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) on significant or sensitive actions affecting relations with another nation.

(d) TJAG, in coordination with the OGC, will provide advice and assistance concerning the requirements of Executive Order 12114 and DODD 6050.7.

(e) The Chief of Public Affairs will provide advice and assistance on public affairs as necessary.

Appendix A to Part 651–References

Military publications and forms are accessible from a variety of sources through the use of electronic media or paper products. In most cases, electronic publications and forms that are associated with military organizations can be accessed at various address or web sites on the Internet. Since electronic addresses can frequently change, or similar web links can also be modified at several locations on the Internet, it's advisable to access those sites using a search engine that is most accommodative, yet beneficial to the user. Additionally, in an effort to facilitate the public right to information, certain publications can also be purchased through the National Technical Information Service (NTIS). Persons interested in obtaining certain types of publications can write to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Section I—Required Publications

AR 360–5

Army Public Affairs, Public Information.

Section II—Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this part.

AR 5–10

Reduction and Realignment Actions.

AR 11–27

Army Energy Program.

AR 95–50

Airspace and Special Military Operation Requirements.

AR 140–475

Real Estate Selection and Acquisition: Procedures and Criteria.

AR 200–1

Environmental Protection and Enhancement.

AR 200–3

Natural Resources—Land, Forest, and Wildlife Management.

AR 200–4

Cultural Resources Management.

AR 210–10

Administration.

AR 210–20

Master Planning for Army Installations.

AR 335–15

Management Information Control System.

AR 380–5

Department of the Army Information Security Program.

AR 385–10

Army Safety Program.

AR 530–1

Operations Security (OPSEC).

DA PAM 70–3

Army Acquisition Procedures.

Defense Acquisition Deskbook

An electronic knowledge presentation system available through the Deputy Under Secretary of Defense (Acquisition Reform) and the Office of the Under Secretary of Defense (Acquisition and Technology).

DOD 5000.2–R

Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems.

DODD 4100.15

Commercial Activities Program.

DODD 4700.4

Natural Resources Management Program, Integrated Natural Resources Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP).

DODD 6050.7

Environmental Effects Abroad of Major Department of Defense Actions.

DODI 4715.9

Environmental Planning and Analysis

Executive Order 11988

Floodplain Management, 3 CFR, 1977 Comp., p. 117

Executive Order 11990

Protection of Wetlands, 3 CFR, 1977 Comp., p. 121.

Executive Order 12114

Environmental Effects Abroad of Major Federal Actions, 3 CFR, 1979 comp., p. 356.

Executive Order 12778

Civil Justice Reform, 3 CFR, 1991 Comp., p. 359.

Executive Order 12856

Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, 3 CFR, 1993 Comp., p. 616.

Executive Order 12861

Elimination of One-Half of Executive Branch Internal Regulations, 3 CFR, 1993 Comp., p. 630.

Executive Order 12866

Regulatory Planning and Review, 3 CFR, 1993 Comp., p. 638.

Executive Order 12898

Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, 3 CFR, 1994 Comp., p. 859.

Executive Order 13007

Indian Sacred Sites, 3 CFR, 1996 Comp., p. 196.

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR, 1997 Comp., p. 198.

Executive Order 13061

Federal Support of Community Efforts Along American Heritage Rivers, 3 CFR, 1997 Comp., p. 221.

Executive Order 13083

Federalism, 3 CFR, 1998 Comp., p. 146.

Public Laws: American Indian Religious Freedom Act.

42 U.S.C. 1996.

Clean Air Act

As amended (42 U.S.C. 7401, *et seq.*).

Clean Water Act of 1977

Public Law 95–217, 91 Stat. 1566 and Public Law 96–148, Sec. 1(a)–(c), 93 Stat. 1088.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

As amended (CERCLA, Superfund) (42 U.S.C. 9601 *et seq.*) Endangered Species Act of 1973.

Public Law 93–205, 87 Stat. 884.

Fish and Wildlife Coordination Act

Public Law 85–624, Sec. 2, 72 Stat. 563 and Public Law 89–72, Sec. 6(b), 79 Stat. 216.

National Environmental Policy Act of 1969

Public Law 91–190, 83 Stat. 852.

National Historic Preservation Act

Public Law 89–665, 80 Stat. 915.

Native American Graves Protection and Repatriation Act

Public Law 101–601, 104 Stat. 3048.

Pollution Prevention Act of 1990

Public Law 101–508, Title VI, Subtitle G, 104 Stat. 13880–321.

Resource Conservation and Recovery Act of 1976

Public Law 94–580, 90 Stat. 2795.

Sikes Act

Public Law 86–797, 74 Stat. 1052.

Note. The following CFRs may be found in your legal office or law library. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20401.

36 CFR Part 800

Advisory Council on Historic Preservation.

40 CFR Parts 1500—1508

Council on Environmental Quality.

Section III—Prescribed Forms

This section contains no entries.

Section IV—Referenced Forms

DA Form 2028

Recommended Changes to Publications and Blank Forms.

DD Form 1391

Military Construction Project Data.

Appendix B to Part 651—Categorical Exclusions

Section I—Screening Criteria

Before any CXs can be used, Screening Criteria as referenced in § 651.29 must be met.

Section II—List of CXs

(a) For convenience only, the CXs are grouped under common types of activities (for example, administration/ operation, construction/demolition, and repair and maintenance). Certain CXs require a REC, which will be completed and signed by the proponent. Concurrence on the use of a CX is required from the appropriate environmental officer (EO), and that signature is required on the REC. The list of CXs is subject to continual review and modification. Requests for additions or changes to the CXs (along with justification) should be sent, through channels, to the ASA (I&E). Subordinate Army headquarters may not modify the CX list through supplements to this part. Proposed modifications to the list of CXs will be published in the FR by HQDA, to provide opportunity for public comment.

(b) Administration/operation activities:

(1) Routine law and order activities performed by military/military police and physical plant protection and security personnel, and civilian natural resources and environmental law officers.

(2) Emergency or disaster assistance provided to federal, state, or local entities (REC required).

(3) Preparation of regulations, procedures, manuals, and other guidance documents that implement, without substantive change, the applicable HQDA or other federal agency regulations, procedures, manuals, and other guidance documents that have been environmentally evaluated (subject to previous NEPA review).

(4) Proposed activities and operations to be conducted in an existing non-historic structure which are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharged to the environment, will not result in substantially different waste discharges from current or previous activities, and emissions will

remain within established permit limits, if any (REC required).

(5) Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

(6) Routinely conducted recreation and welfare activities not involving off-road recreational vehicles.

(7) Deployment of military units on a temporary duty (TDY) or training basis where existing facilities are used for their intended purposes consistent with the scope and size of existing mission.

(8) Preparation of administrative or personnel-related studies, reports, or investigations.

(9) Approval of asbestos or lead-based paint management plans drafted in accordance with applicable laws and regulations (REC required).

(10) Non-construction activities in support of other agencies/organizations involving community participation projects and law enforcement activities.

(11) Ceremonies, funerals, and concerts. This includes events such as state funerals, to include flyovers.

(12) Reductions and realignments of civilian and/or military personnel that: fall below the thresholds for reportable actions as prescribed by statute (10 U.S.C. 2687) and do not involve related activities such as construction, renovation, or demolition activities that would otherwise require an EA or an EIS to implement (REC required). This includes reorganizations and reassignments with no changes in force structure, unit redesignations, and routine administrative reorganizations and consolidations (REC required).

(13) Actions affecting Army property that fall under another federal agency's list of categorical exclusions when the other federal agency is the lead agency (decision maker), or joint actions on another federal agency's property that fall under that agency's list of categorical exclusions (REC required).

(14) Relocation of personnel into existing federally-owned (or state-owned in the case of ARNG) or commercially-leased space, which does not involve a substantial change in the supporting infrastructure (for example, an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase is an example of substantial change) (REC required).

(c) Construction and demolition:

(1) Construction of an addition to an existing structure or new construction on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste (REC required).

(2) Demolition of non-historic buildings, structures, or other improvements and disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazard items (REC required).

(3) Road or trail construction and repair on existing rights-of-ways or on previously disturbed areas.

(d) Cultural and natural resource management activities:

(1) Land regeneration activities using only native trees and vegetation, including site preparation. This does not include forestry operations (REC required).

(2) Routine maintenance of streams and ditches or other rainwater conveyance structures (in accordance with USACE permit authority under Section 404 of the Clean Water Act and applicable state and local permits), and erosion control and stormwater control structures (REC required).

(3) Implementation of hunting and fishing policies or regulations that are consistent with state and local regulations.

(4) Studies, data collection, monitoring and information gathering that do not involve major surface disturbance. Examples include topographic surveys, bird counts, wetland mapping, and other resources inventories (REC required).

(5) Maintenance of archaeological, historical, and endangered/threatened species avoidance markers, fencing, and signs.

(e) Procurement and contract activities:

(1) Routine procurement of goods and services (complying with applicable procedures for sustainable or ''green'' procurement) to support operations and infrastructure, including routine utility services and contracts.

(2) Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing right-of-way, easement, distribution systems, and/or facilities (REC required).

(3) Conversion of commercial activities under the provisions of AR 5–20. This includes only those actions that do not change the actions or the missions of the organization or alter the existing land-use patterns.

(4) Modification, product improvement, or configuration engineering design change to materiel, structure, or item that does not change the original impact of the materiel, structure, or item on the environment (REC required).

(5) Procurement, testing, use, and/or conversion of a commercially available product (for example, forklift, generator, chain saw, etc.) which does not meet the definition of a weapon system (Title 10, U.S.C., Section 2403. ''Major weapon systems: Contractor guarantees''), and does not result in any unusual disposal requirements.

(6) Acquisition or contracting for spares and spare parts, consistent with the approved Technical Data Package (TDP).

(7) Modification and adaptation of commercially available items and products for military application (for example, sportsman's products and wear such as holsters, shotguns, sidearms, protective shields, etc.), as long as modifications do not alter the normal impact to the environment (REC required).

(8) Adaptation of non-lethal munitions and restraints from law enforcement suppliers and industry (such as rubber bullets, stun grenades, smoke bombs, etc.) for military police and crowd control activities where there is no change from the original product design and there are no unusual disposal requirements. The development and use by the military of non-lethal munitions and restraints which are similar to those used by local police forces and in which there are no unusual disposal requirements (REC required).

(f) Real estate activities:

(1) Grants or acquisitions of leases, licenses, easements, and permits for use of real property or facilities in which there is no significant change in land or facility use. Examples include, but are not limited to, Army controlled property and Army leases of civilian property to include leases of training, administrative, general use, special purpose, or warehouse space (REC required).

(2) Disposal of excess easement areas to the underlying fee owner (REC required).

(3) Transfer of real property administrative control within the Army, to another military department, or to other federal agency, including the return of public domain lands to the Department of Interior, and reporting of property as excess and surplus to the GSA for disposal (REC required).

(4) Transfer of active installation utilities to a commercial or governmental utility provider, except for those systems on property that has been declared excess and proposed for disposal (REC required).

(5) Acquisition of real property (including facilities) where the land use will not change substantially or where the land acquired will not exceed 40 acres and the use will be similar to current or ongoing Army activities on adjacent land (REC required).

(6) Disposal of real property (including facilities) by the Army where the reasonably foreseeable use will not change significantly (REC required).

(g) Repair and maintenance activities:

(1) Routine repair and maintenance of buildings, airfields, grounds, equipment, and other facilities. Examples include, but are not limited to: Removal and disposal of asbestos-containing material (for example, roof material and floor tile) or lead-based paint in accordance with applicable regulations; removal of dead, diseased, or damaged trees; and repair of roofs, doors, windows, or fixtures (REC required for removal and disposal of asbestos-containing material and lead-based paint or work on historic structures).

(2) Routine repairs and maintenance of roads, trails, and firebreaks. Examples include, but are not limited to: grading and clearing the roadside of brush with or without the use of herbicides; resurfacing a road to its original conditions; pruning vegetation, removal of dead, diseased, or damaged trees and cleaning culverts; and minor soil stabilization activities.

(3) Routine repair and maintenance of equipment and vehicles (for example, autos, tractors, lawn equipment, military vehicles, etc.) which is substantially the same as that routinely performed by private sector owners and operators of similar equipment and vehicles. This does not include depot maintenance of unique military equipment.

(h) Hazardous materials/hazardous waste management and operations:

(1) Use of gauging devices, analytical instruments, and other devices containing sealed radiological sources; use of industrial radiography; use of radioactive material in medical and veterinary practices; possession of radioactive material incident to performing services such as installation, maintenance, leak tests, and calibration; use of uranium as shielding material in containers or devices; and radioactive tracers (REC required).

(2) Immediate responses in accordance with emergency response plans (for example, Spill Prevention Control and Countermeasure Plan (SPCCP)/Installation Spill Contingency Plan (ISCP), and Chemical Accident and Incident Response Plan) for release or discharge of oil or hazardous materials/substances; or emergency actions taken by Explosive Ordnance Demolition (EOD) detachment or Technical Escort Unit.

(3) Sampling, surveying, well drilling and installation, analytical testing, site preparation, and intrusive testing to determine if hazardous wastes, contaminants, pollutants, or special hazards (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance) are present (REC required).

(4) Routine management, to include transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, radiological and special hazards (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance), and/or hazardous waste that complies with EPA, Army, or other regulatory agency requirements. This CX is not applicable to new construction of facilities for such management purposes.

(5) Research, testing, and operations conducted at existing enclosed facilities consistent with previously established safety levels and in compliance with applicable federal, state, and local standards. For facilities without existing NEPA analysis, including contractor-operated facilities, if the operation will substantially increase the extent of potential environmental impacts or is controversial, an EA (and possibly an EIS) is required.

(6) Reutilization, marketing, distribution, donation, and resale of items, equipment, or materiel; normal transfer of items to the Defense Logistics Agency. Items, equipment, or materiel that have been contaminated with hazardous materials or wastes will be adequately cleaned and will conform to the applicable regulatory agency's requirements.

(i) Training and testing:

(1) Simulated war games (classroom setting) and on-post tactical and logistical exercises involving units of battalion size or smaller, and where tracked vehicles will not be used (REC required to demonstrate coordination with installation range control and environmental office).

(2) Training entirely of an administrative or classroom nature.

(3) Intermittent on-post training activities (or off-post training covered by an ARNG land use agreement) that involve no live fire or vehicles off established roads or trails. Uses include, but are not limited to, land navigation, physical training, Federal Aviation Administration (FAA) approved aerial overflights, and small unit level training.

(j) Aircraft and airfield activities:

(1) Infrequent, temporary (less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate (REC required).

(2) Flying activities in compliance with Federal Aviation Administration Regulations and in accordance with normal flight patterns and elevations for that facility, where the flight patterns/elevations have been addressed in an installation master plan or other planning document that has been subject to NEPA public review.

(3) Installation, repair, or upgrade of airfield equipment (for example, runway visual range equipment, visual approach slope indicators).

(4) Army participation in established air shows sponsored or conducted by non-Army entities on other than Army property.

Appendix C to Part 651—Mitigation and Monitoring

(a) The CEQ regulations (40 CFR parts 1500–1508) recognize the following five means of mitigating an environmental impact. These five approaches to mitigation are presented in order of desirability.

(1) Avoiding the impact altogether by not taking a certain action or parts of an action. This method avoids environmental impact by eliminating certain activities in certain areas. As an example, the Army's Integrated Training Area Management (ITAM) program accounts for training requirements and activities while considering natural and cultural resource conditions on ranges and training land. This program allows informed management decisions associated with the use of these lands, and has mitigated potential impacts by limiting activities to areas that are compatible with Army training needs. Sensitive habitats and other resources are thus protected, while the mission requirements are still met.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. Limiting the degree or magnitude of the action can reduce the extent of an impact. For example, changing the firing time or the number of rounds fired on artillery ranges will reduce the noise impact on nearby residents. Using the previous ITAM example, the conditions of ranges can be monitored, and, when the conditions on the land warrant, the intensity or magnitude of the training on that parcel can be modified through a variety of decisions.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the effect on the environment. This method restores the environment to its previous condition or better. Movement of troops and vehicles across vegetated areas often destroys vegetation. Either reseeding or replanting the areas with native plants after the exercise can mitigate this impact.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. This method designs the action so as to reduce adverse environmental effects. Examples include maintaining erosion control structures, using air pollution control devices, and encouraging car pools in order to reduce transportation effects such as air pollution, energy consumption, and traffic congestion.

(5) Compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20). This method replaces the resource or environment that will be impacted by the action. Replacement can occur in-kind or otherwise; for example, deer habitat in the project area can be replaced with deer habitat in another area; an in-kind replacement at a different location. This replacement can occur either on the impact site or at another location. This type of mitigation is often used in water resources projects.

(b) The identification and evaluation of mitigations involves the use of experts familiar with the predicted environmental impacts. Many potential sources of information are available for assistance. These include sources within the Army such as the USACHPPM, the USAEC, the MACOM environmental office, the ODEP, COE research laboratories, COE districts and divisions, and DoD Regional Support Centers. State agencies are another potential source of information, and the appropriate POC within these agencies may be obtained from the installation environmental office. Local interest groups may also be able to help identify potential mitigation measures. Other suggested sources of assistance include:

(1) Aesthetics:

(i) Installation Landscape Architect.

(ii) COE District Landscape Architects.

(2) Air Quality:

(i) Installation Environmental Specialist.

(ii) Installation Preventive Medicine Officer.

(3) Airspace:

(i) Installation Air Traffic and Airspace Officers.

(ii) DA Regional Representative to the FAA.

(iii) DA Aeronautical Services.

(iv) Military Airspace Management System Office.

(v) Installation Range Control Officer.

(4) Earth Science:

(i) Installation Environmental Specialist.

(ii) USACE District Geotechnical Staff.

(5) Ecology:

(i) Installation Environmental Specialist.

(ii) Installation Wildlife Officer.

(iii) Installation Forester.

(iv) Installation Natural Resource Committee.

(v) USACE District Environmental Staff.

(6) Energy/Resource Conservation: Installation Environmental Specialist.

(7) Health and Safety:

(i) Installation Preventive Medicine Officer.

(ii) Installation Safety Officer.

(iii) Installation Hospital.

(iv) Installation Mental Hygiene or Psychiatry Officer.

(v) Chaplain's Office.

(8) Historic/Archaeological Resources:

(i) Installation Environmental Specialist.

(ii) Installation Historian or Architect.

(iii) USACE District Archaeologist.

(9) Land Use Impacts: (i) Installation Master Planner.

(ii) USACE District Community Planners.
(10) Socioeconomics:
(i) Personnel Office.
(ii) Public Information Officer.
(iii) USACE District Economic Planning Staff.
(11) Water Quality:
(i) Installation Environmental Specialist.
(ii) Installation Preventive Medicine Officer.
(iii) USACE District Environmental Staff.
(12) Noise:
(i) Preventive Medicine Officer.
(ii) Directorate of Public Works.
(iii) Installation Master Planner.
(13) Training Impacts:
Installation Director of Plans, Training, and Mobilization

(c) Several different mitigation techniques have been used on military installations for a number of years. The following examples illustrate the variety of possible measures:

(1) There are maneuver restrictions in areas used extensively for tracked vehicle training. These restrictions are not designed to infringe on the military mission, but rather to reduce the amount of damage to the training area.

(2) Aerial seeding has been done on some installations to reduce erosion problems.

(3) Changing the time and/or frequency of operations has been used. This may involve changing the season of the year, the time of day, or even day of the week for various activities. These changes avoid noise impacts as well as aesthetic, transportation, and some ecological problems.

(4) Reducing the effects of construction has involved using techniques that keep heavy equipment away from protected trees and quickly re-seeding areas after construction.

(d) Monitoring and enforcement programs are applicable (40 CFR 1505.2(c)) and the specific adopted action is an important case (40 CFR 1505.3) if:

(1) There is a change in environmental conditions or project activities that were assumed in the EIS, such that original predictions of the extent of adverse environmental impacts may be too limited.

(2) The outcome of the mitigation measure is uncertain, such as in the case of the application of new technology.

(3) Major environmental controversy remains associated with the selected alternative.

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to federal-or state-listed endangered or threatened species; important historic or archaeological sites that are either on, or meet eligibility requirements for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. Evaluation and determination of what constitutes serious harm must be made in coordination with the appropriate federal, state, or local agency responsible for each particular program.

(e) Five basic considerations affect the establishment of monitoring programs:

(1) *Legal requirements.* Permits for some actions will require that a monitoring system be established (for example, dredge and fill permits from the USACE). These permits will generally require both enforcement and effectiveness monitoring programs.

(2) *Protected resources.* These include federal-or state-listed endangered or threatened species, important historic or archaeological sites (whether or not these are listed or eligible for listing on the National Register of Historic Places), wilderness areas, wild and scenic rivers, and other public or private protected resources. Private protected resources include areas such as Audubon Society Refuges, Nature Conservancy lands, or any other land that would be protected by law if it were under government ownership, but is privately owned. If any of these resources are affected, an effectiveness and enforcement-monitoring program must be undertaken in conjunction with the federal, state, or local agency that manages the type of resource.

(3) *Major environmental controversy.* If a controversy remains regarding the effect of an action or the effectiveness of a mitigation, an enforcement and effectiveness monitoring program must be undertaken. Controversy includes not only scientific disagreement about the mitigation's effectiveness, but also public interest or debate.

(4) *Mitigation outcome.* The probability of the mitigation's success must be carefully considered. The proponent must know if the mitigation has been successful elsewhere. The validity of the outcome should be confirmed by expert opinion. However, the proponent should note that a certain technique, such as artificial seeding with the natural vegetation, which may have worked successfully in one area, may not work in another.

(5) *Changed conditions.* The final consideration is whether any condition, such as the environmental setting, has changed (for example, a change in local land use around the area, or a change in project activities, such as increased amount of acreage being used or an increased movement of troops). Such changes will require preparation of a supplemental document (see §§ 651.5(g) and 651.24) and additional monitoring. If none of these conditions are met (that is, requirement by law, protected resources, no major controversy is involved, effectiveness of the mitigation is known, and the environmental or project conditions have not changed), then only an enforcement monitoring program is needed. Otherwise, both an enforcement and effectiveness monitoring program will be required.

(f) Enforcement monitoring program. The development of an enforcement monitoring program is governed by who will actually perform the mitigation; a contractor, a cooperating agency, or an in-house (Army) lead agency. The lead agency is ultimately responsible for performing any mitigation activities.

(1) *Contract performance.* Several provisions must be made in work to be performed by contract. The lead agency must ensure that contract provisions include the performance of the mitigation activity and that penalty clauses are written into the contracts. It must provide for timely inspection of the mitigation measures and is responsible for enforcing all contract provision.

(2) *Cooperating agency performance.* The lead agency must ensure that, if a cooperating agency performs the work, it understands its role in the mitigation. The lead agency must determine and agree upon how the mitigation measures will be funded. It must also ensure that any necessary formal paperwork such as cooperating agreements is complete.

(3) *Lead agency performance.* If the lead agency performs the mitigation, the proponent must ensure that needed tasks are performed, provide appropriate funding in the project budget, arrange for necessary manpower allocations, and make any necessary changes in the agency (installation) regulations (such as environmental or range regulations).

(g) Effectiveness monitoring. Effectiveness monitoring is often difficult to establish. The first step is to determine what must be monitored, based on criteria discussed during the establishment of the system; for example, the legal requirements, protected resources, area of controversy, known effectiveness, or changed conditions. Initially, this can be a very broad statement, such as reduction of impacts on a particular stream by a combination of replanting, erosion control devices, and range regulations. The next step is finding the expertise necessary to establish the monitoring system. The expertise may be available on-post or may be obtained from an outside source. After a source of expertise is located, the program can be established using the following criteria:

(1) Any technical parameters used must be measurable; for example, the monitoring program must be quantitative and statistically sound.

(2) A baseline study must be completed before the monitoring begins in order to identify the actual state of the system prior to any disturbance.

(3) The monitoring system must have a control, so that it can isolate the effects of the mitigation procedures from effects originating outside the action.

(4) The system's parameters and means of measuring them must be replicable.

(5) Parameter results must be available in a timely manner so that the decision maker can take any necessary corrective action before the effects are irreversible.

(6) Not every mitigation has to be monitored separately. The effectiveness of several mitigation actions can be determined by one measurable parameter. For example, the turbidity measurement from a stream can include the combined effectiveness of mitigation actions such as reseeding, maneuver restrictions, and erosion control devices. However, if a method combines several parameters and a critical change is noted, each mitigation measurement must be examined to determine the problem.

Appendix D to Part 651—Public Participation Plan

The objective of the plan will be to encourage the full and open discussion of issues related to Army actions. Some NEPA actions will be very limited in scope, and may not require full public participation and involvement. Other NEPA actions will obviously be of interest, not only to the local

community, but to others across the country as well.

(a) To accomplish this objective, the plan will require:

(1) Dissemination of information to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters. Such information may be subject to Freedom of Information Act and operations security review.

(2) The invitation of public comments through two-way communication channels that will be kept open through various means.

(3) The use of fully informed public affairs officers at all levels.

(4) Preparation of EAs which incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(5) Consultation of persons and agencies such as:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service) or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Native Americans.

(v) Members and officials of those identifiable interest groups of local or national scope that may have an interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(b) Public involvement should be solicited using the following processes and procedures:

(1) Direct individual contact. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of a very limited scope. This contact should identify:

(i) Persons expected to express an opinion and later participate.

(ii) Preliminary positions of such persons on the scope of issues that the analysis must address.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues, inviting the public to express views on the proposed courses of action. Public suggestions or additional alternative courses of action may be expressed at these gatherings which need not be formal public hearings.

(4) Any other processes and procedures to accomplish the appropriate level of public involvement.

(c) Scoping Guidance. All affected parties must be included in the scoping process (AR 360–5). The plan must include the following:

(1) Information disseminated to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. Such information may be subject to Freedom of Information Act and operations security review.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, and federal government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above.

(4) Public affairs officers at all levels will be kept informed.

(5) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(6) Preparation of EAs will incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(7) Persons and agencies to be consulted include the following:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action, (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Indian tribes.

(v) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(8) The public involvement processes and procedures by which participation may be solicited include the following:

(i) The direct individual contact process identifies persons expected to express an opinion and participate in later public meetings. Direct contact may also identify the preliminary positions of such persons on the scope of issues that the EIS will address. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of very limited scope.

(ii) Small workshops or discussion groups.

(iii) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(iv) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(9) The meetings described above should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent of (a) of this appendix.

(10) Public surveys or polls to identify public opinion of a proposed action will be performed (AR 335–15, chapter 10).

(d) Preparing the Notice of Intent. In preparing the NOI, the proponent will:

(1) In the NOI, identify the significant issues to be analyzed in the EIS.

(2) In the NOI, identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, make that distinction.

(3) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5 and 1501.6).

(4) Identify the method by which the agency will invite participation of affected parties; and identify a tentative list of the affected parties to be notified.

(5) Identify the proposed method for accomplishing the scoping procedure.

(6) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decision-making schedule including:

(i) The scoping process itself.

(ii) Collecting or analyzing environmental data, including studies required of cooperating agencies.

(iii) Preparation of DEISs and FEISs.

(iv) Filing of the ROD.

(v) Taking the action.

(7) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions that will involve separate environmental analysis.

(8) If applicable, in the NOI, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

Appendix E to Part 651—Content of the Environmental Impact Statement

(a) EISs will:

(1) Be analytic rather than encyclopedic. Impacts will be discussed in proportion to their significance; and insignificant impacts will only be briefly discussed, sufficient to show why more analysis is not warranted.

(2) Be kept concise and no longer than absolutely necessary to comply with NEPA, CEQ regulations, and this part. Length should

be determined by potential environmental issues, not project size. The EIS should be no longer than 300 pages.

(3) Describe the criteria for selecting alternatives, and discuss those alternatives, including the ''no action'' alternative, to be considered by the ultimate decision maker.

(4) Serve as a means to assess environmental impacts of proposed military actions, rather than justifying decisions.

(b) The EIS will consist of the following:

(1) *Cover sheet.* The cover sheet will not exceed one page (40 CFR 1502.11) and will be accompanied by a signature page for the proponent, designated as preparer; the installation environmental office (or other source of NEPA expertise), designated as reviewer; and the Installation Commander (or other Activity Commander), designated as approver. It will include:

(i) The following statement: ''The material contained in the attached (final or draft) EIS is for internal coordination use only and may not be released to non-Department of Defense agencies or individuals until coordination has been completed and the material has been cleared for public release by appropriate authority.'' This sheet will be removed prior to filing the document with the EPA.

(ii) A list of responsible agencies including the lead agency and any cooperating agency.

(iii) The title of the proposed action that is the subject of the statement and, if appropriate, the titles of related cooperating agency actions, together with state and county (or other jurisdiction as applicable) where the action is located.

(iv) The name, address, and telephone number of the person at the agency who can supply further information, and, as appropriate, the name and title of the major approval authority in the command channel through HQDA staff proponent.

(v) A designation of the statement as a draft, final, or draft or final supplement.

(vi) A one-paragraph abstract of the statement that describes only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

(vii) The date by which comments must be received, computed in cooperation with the EPA.

(2) *Summary.* The summary will stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. The summary presentation will focus on the scope of the EIS, including issues that will not be evaluated in detail. It should list all federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other federal environmental protection laws will be included (40 CFR 1502.25). To simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with the narrative. The EIS summary should be written at the standard middle school reading level. This summary should not exceed 15 pages. An additional summary document will be prepared for separate submission to the DEP and the ASA(I&E). This will identify progress ''to the date,'' in addition to the standard EIS summary which:

(i) Summarizes the content of the document (from an oversight perspective).

(ii) Outlines mitigation requirements (to improve mitigation tracking and the programming of funds).

(iii) Identifies major and unresolved issues and potential controversies. For EIS actions that have been delegated by the ASA(I&E), this document will also include status of requirements and conditions established by the delegation letter.

(3) *Table of contents.* This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

(4) *Purpose of and need for the action.* This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section will briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives. This section is designed specifically to call attention to the benefits of the proposed action. If a cost-benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here.

(5) *Alternatives considered, including proposed action and no action alternative.* This section presents all reasonable alternatives and their likely environmental impacts, written in simple, nontechnical language for the lay reader. A no action alternative must be included (40 CFR 1502.14(d)). A preferred alternative need not be identified in the DEIS; although a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)). The environmental impacts of the alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decision maker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of graphics and tabular or matrix format is encouraged to provide the reviewer with an at-a-glance review. In summary, the following points are required:

(i) A description of all reasonable alternatives, including the preferred action, alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the no action alternative.

(ii) A comparative presentation of the environmental consequences of all reasonable alternative actions, including the preferred alternative.

(iii) A description of the mitigation measures and/or monitoring procedures (§ 651.15) nominated for incorporation into the proposed action and alternatives, as well as mitigation measures that are available but not incorporated and/or monitoring procedures (§ 651.15).

(iv) Listing of any alternatives that were eliminated from detailed study. A brief discussion of the reasons for which each alternative was eliminated.

(6) *Affected environment (baseline conditions) that may be impacted.* This section will contain information about existing conditions in the affected areas in sufficient detail to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Affected elements could include, for example, biophysical characteristics (ecology and water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for points covered will be related to the significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form, or referenced.

(7) *Environmental and socioeconomic consequences.* This section forms the scientific and analytic basis for the comparison of impacts. It should discuss:

(i) Direct effects and their significance.

(ii) Indirect effects and their significance.

(iii) Possible conflicts between the proposed action and existing land use plans, policies, and controls.

(iv) Environmental effects of the alternatives, including the proposed action and the no action alternative.

(v) Energy requirements and conservation potential of various alternatives and mitigation measures.

(vi) Irreversible and irretrievable commitments of resources associated with the proposed action.

(vii) Relationship between short-term use of the environment and maintenance and enhancement of long-term productivity.

(viii) Urban quality, historic, and cultural resources, and design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(ix) Cumulative effects of the proposed action in light of other past, present, and foreseeable actions.

(x) Means to mitigate or monitor adverse environmental impacts.

(xi) Any probable adverse environmental effects that cannot be avoided.

(8) *List of preparers.* The EIS will list the names of its preparers, together with their qualifications (expertise, experience, and professional disciplines) (40 CFR 1502.17), including those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, and basic components of the statement. When possible, the people who are responsible for a particular analysis, as well as an analysis of background papers, will be identified. If some or all of the preparers are contractors' employees, they must be identified as such. Identification of the firm that prepared the EIS is not, by itself, adequate to meet the requirements of this point. Normally, this list will not exceed two pages. Contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. These statements will be referenced in this section of the EIS.

(9) *Distribution list.* For the DEIS, a list will be prepared indicating from whom review and comment is requested. The list will include public agencies and private parties or

organizations. The distribution of the DEIS and FEIS will include the CBTDEVs from whom comments were requested, irrespective of whether they provided comments.

(10) *Index.* The index will be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

(11) *Appendices (as appropriate).* If an agency prepares an appendix to an EIS, the appendix will consist of material prepared in connection with an EIS (distinct from material not so prepared and incorporated by reference), consist only of material that substantiates any analysis fundamental to an impact statement, be analytic and relevant to the decision to be made, and be circulated with the EIS or readily available.

Appendix F to Part 651—Glossary

Section 1—Abbreviations

AAE
Army Acquisition Executive.

AAPPSO
Army Acquisition Pollution Prevention Support Office.

ACAT
Acquisition Category.

ACSIM
Assistant Chief of Staff for Installation Management.

ADNL
A-weighted day-night levels.

AQCR
Air Quality Control Region.

AR
Army Regulation.

ARNG
Army National Guard.

ARSTAF
Army Staff.

ASA(AL&T)
Assistant Secretary of the Army (Acquisition, Logistics, and Technology).

ASA(FM)
Assistant Secretary of the Army for Financial Management.

ASA(I&E)
Assistant Secretary of the Army (Installations and Environment).

ASD(ISA)
Assistant Secretary of Defense (International Security Affairs).

CARD
Cost Analysis Requirements Description.

CBTDEV
Combat Developer.

CEQ
Council on Environmental Quality.

CERCLA
Comprehensive Environmental Response Compensation and Liability Act.

CDNL
C-Weighted Day-Night Levels.

CFR
Code of Federal Regulations.

CONUS
Continental United States.

CX
Categorical Exclusion.

DA
Department of the Army.

DAD
Defense Acquisition Deskbook.

DASA(ESOH)
Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

DCSLOG
Deputy Chief of Staff for Logistics.

DCSOPS
Deputy Chief of Staff for Operations and Plans.

DEIS
Draft Environmental Impact Statement.

DEP
Director of Environmental Programs.

DOD
Department of Defense.

DOPAA
Description of Proposed Action and Alternatives.

DSA
Deputy for System Acquisition.

DTIC
Defense Technical Information Center.

DTLOMS
Doctrine, Training, Leader Development, Organization, Materiel, and Soldier.

DUSD(IE)
Deputy Under Secretary of Defense for Installations and Environment.

EA
Environmental Assessment.

EBS
Environmental Baseline Studies.

EC
Environmental Coordinator.

ECAP
Environmental Compliance Achievement Program.

ECAS
Environmental Compliance Assessment System.

EE/CA
Engineering Evaluation/Cost Analysis.

EICS
Environmental Impact Computer System.

EIFS
Economic Impact Forecast System.

EIS
Environmental Impact Statement.

EJ
Environmental Justice.

EOD
Explosive Ordnance Demolition.

EPA
Environmental Protection Agency.

EPR
Environmental Program Requirements.

EQCC
Environmental Quality Control Committee.

ESH
Environment, Safety, and Health.

FAA
Federal Aviation Administration.

FEIS
Final Environmental Impact Statement.

FNSI
Finding of No Significant Impact.

FR
Federal Register.

FS
Feasibility Study.

FTP
Full-Time Permanent.

GC
General Counsel.

GOCO
Government-Owned, Contractor-Operated.

GSA
General Services Administration.

HQDA
Headquarters, Department of the Army.

ICRMP
Integrated Cultural Resources Management Plan.

ICT
Integrated Concept Team.

INRMP
Integrated Natural Resources Management Plan.

IPT
Integrated Process Team.

ISCP
Installation Spill Contingency Plan.

ISR
Installation Status Report.

ITAM
Integrated Training Area Management.

LCED
Life Cycle Environmental Documentation.

MACOM
Major Army Command.

MATDEV
Materiel Developer.

MDA
Milestone Decision Authority.

MFA
Materiel Fielding Agreement.

MFP

Materiel Fielding Plan.

MILCON

Military Construction.

MNS

Mission Needs Statement.

MOA

Memorandum of Agreement.

MOU

Memorandum of Understanding.

NAGPRA

Native American Graves Protection and Repatriation Act.

NEPA

National Environmental Policy Act.

NGB

National Guard Bureau.

NHPA

National Historic Preservation Act.

NOA

Notice of Availability.

NOI

Notice of Intent.

NPR

National Performance Review.

NRC

Nuclear Regulatory Commission.

NWR

Notice of Availability of Weekly Receipts (EPA).

OASD(PA)

Office of the Assistant Secretary of Defense for Public Affairs.

OCLL

Office of the Chief of Legislative Liaison.

OCPA

Office of the Chief of Public Affairs.

ODEP

Office of the Director of Environmental Programs.

OFS

Officer Foundation Standards.

OGC

Office of General Counsel.

OIPT

Overarching Integrated Process Team.

OMA

Operations and Maintenance Army.

OMANG

Operations and Maintenance Army National Guard.

OMAR

Operations and Maintenance Army Reserve.

OOTW

Operations Other Than War.

OPSEC

Operations Security.

ORD

Operating Requirements Document.

OSD

Office of the Secretary of Defense.

OSG

Office of the Surgeon General.

PAO

Public Affairs Officer.

PCB

Polychlorinated Biphenyls.

PDEIS

Preliminary Draft Environmental Impact Statement.

PEO

Program Executive Officer.

PM

Program Manager.

POC

Point of Contact.

POL

Petroleum, Oils, and Lubricants.

PPBES

Program Planning and Budget Execution System.

RCRA

Resource Conservation and Recovery Act.

RDT&E

Research, Development, Test, and Evaluation.

REC

Record of Environmental Consideration.

ROD

Record of Decision.

RONA

Record of Non-Applicability.

RSC

Regional Support Command.

S&T

Science and Technology.

SA

Secretary of the Army.

SARA

Superfund Amendments and Reauthorization Act.

SASO

Stability and Support Operations.

SOFA

Status of Forces Agreement.

SPCCP

Spill Prevention Control and Countermeasure Plan.

TDP

Technical Data Package.

TDY

Temporary Duty.

TEMP

Test and Evaluation Master Plan.

TJAG

The Judge Advocate General.

TOE

Table of Organization Equipment.

TRADOC

U.S. Army Training and Doctrine Command.

USACE

U.S. Army Corps of Engineers.

USACHPPM

U.S. Army Center for Health Promotion and Preventive Medicine.

USAEC

U.S. Army Environmental Center.

U.S.C.

United States Code.

Section II—Terms

Categorical Exclusion

A category of actions that do not require an EA or an EIS because Department of the Army (DA) has determined that the actions do not have an individual or cumulative impact on the environment.

Environmental (or National Environmental Policy Act) Analysis

This term, as used in this part, will include all documentation necessary to coordinate and staff analyses or present the results of the analyses to the public or decision maker.

Foreign Government

A government, regardless of recognition by the United States, political factions, and organizations, that exercises governmental power outside the United States.

Foreign Nations

Any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments. It also refers to any area under military occupation by the United States alone or jointly with any other foreign government. Includes any area that is the responsibility of an international organization of governments; also includes contiguous zones and fisheries zones of foreign nations.

Global Commons

Geographical areas outside the jurisdiction of any nation. They include the oceans outside territorial limits and Antarctica. They do not include contiguous zones and fisheries zones of foreign nations.

Headquarters, Department of the Army proponent

As the principal planner, implementer, and decision authority for a proposed action, the HQDA proponent is responsible for the substantive review of the environmental documentation and its thorough consideration in the decision-making process.

Major Federal Action

Reinforces, but does not have a meaning independent of, ''significantly affecting the environment,'' and will be interpreted in that context. A federal proposal with ''significant effects'' requires an EIS, whether it is ''major'' or not. Conversely, a ''major federal action'' without ''significant effects'' does not necessarily require an EIS.

Preparers

Personnel from a variety of disciplines who write environmental documentation in clear and analytical prose. They are primarily responsible for the accuracy of the document.

Proponent

Proponent identification depends on the nature and scope of a proposed action as follows:

(1) Any Army structure may be a proponent. For instance, the installation/activity Facility Engineer (FE)/Director of Public Works becomes the proponent of installation-wide Military Construction Army (MCA) and Operations and Maintenance (O&M) Activity; Commanding General, TRADOC becomes the proponent of a change in initial entry training; and the Program Manager becomes the proponent for a major acquisition program. The proponent may or may not be the preparer.

(2) In general, the proponent is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action. The proponent has the responsibility to prepare and/or secure funding for preparation of the environmental documentation.

Significantly Affecting the Environment

The significance of an action's, program's, or project's effects must be evaluated in light of its context and intensity, as defined in 40 CFR 1508.27.

Section III—Special Abbreviations and Terms

This part uses the following abbreviations, brevity codes or acronyms not contained in AR 310–50. These include use for electronic publishing media and computer terminology, as follows:

WWW World Wide Web.

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Register but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 3986/P.L. 107–154

To extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001. (Mar. 25, 2002; 116 Stat. 80)

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