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The President

Memorandum of July 23, 2002

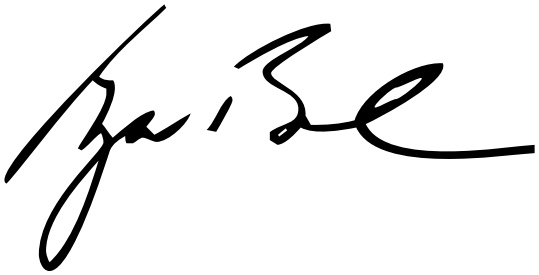
Delegation of Authority With Respect to Concluding Amendments to the July 12, 1999, Agreement Concerning Trade in Certain Steel Products From the Russian Federation

Memorandum for the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, it is hereby ordered that the Secretary of Commerce is designated and empowered to exercise, following consultations with the United States Trade Representative and other agencies as appropriate, the authority vested in the President to conclude amendments to the July 12, 1999, Agreement Concerning Trade in Certain Steel Products from the Russian Federation in accordance with Article XI of the 1990 Agreement on Trade Relations between the United States of America and the Russian Federation, and title IV of the Trade Act of 1974. The Secretary may exercise such authority without approval, ratification, or other action of the President.

As the Secretary of Commerce may direct, the Assistant Secretary for Import Administration is authorized to exercise the authority vested in the Secretary by this memorandum.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 23, 2002.

[FR Doc. 02–19137
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Rules and Regulations

Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–361–A35; DA–01–04]

Milk in the Mideast Marketing Area; Interim Order Amending the Order.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain pooling provisions of the Mideast Federal milk order on an interim basis. Disorderly marketing conditions from inadequate pooling provisions warrant these amendments. It implements amendments to the *Pool plant* provisions which eliminate automatic pool plant status for the 6-month period of March through August, eliminate the inclusion of milk shipments to a distributing plant regulated by another Federal milk order as pool-qualifying shipments, eliminate the ''split plant'' feature, eliminate the inclusion of diversions made by a pool supply plant located outside the marketing area to a pool distributing plant as the supply plant's qualifying shipments, and establish a ''net shipments'' provision for supply plants. For the *Producer milk* provisions, this interim order implements amendments that increase the number of days that the milk of a producer needs to be delivered to a pool plant before being eligible for diversion, establish year-round diversion limits for producer milk, adjusted seasonally, for distributing plants pooled on the order, and exclude from receipts the diversions made by a pool plant to a second pool plant from the calculation of the diversion limitation. More than the required number of producers in the Mideast marketing area have approved the issuance of the interim order as amended.

EFFECTIVE DATE: August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Stop 0231, Room 2968, USDA/AMS/Dairy Programs, Order Formulation Branch, 1400 Independence Avenue SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address *Gino.Tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses'', the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. In October 2001, there were 11,120 producers pooled on and 40 handlers regulated by the Mideast order. Based on these criteria, the vast majority of the producers and handlers would be considered small businesses. The adoption of the amended pooling standards serve to revise and establish criteria that ensure the pooling of producers, producer milk, and plants that have a reasonable association with, and are consistently serving, the fluid milk needs of the Mideast milk marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market, and determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an equal fashion to both large and small businesses.

Prior documents in this proceeding:

Notice of Hearing: Issued September 21, 2001; published September 28, 2001 (66 FR 49571).

Tentative Final Decision: Issued June 4, 2002; published June 11, 2002 (67 FR 39871).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Mideast order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Mideast order:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Mideast order, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Mideast order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings. It is necessary and in the public interest to make these interim amendments to the Mideast order effective August 1, 2002. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The interim amendments to this order are known to handlers. The final decision containing the proposed amendments to this order was issued on June 4, 2002.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on August 1, 2002. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Mideast order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Mideast order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR Part 1033 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.7 is amended by:

a. Removing ''; and'' at the end of paragraph (c)(1)(iii) and adding a period in its place;

b. Removing paragraph (c)(1)(iv);

c. Revising paragraphs (c)(2), (c)(4), and (d)(2);

d. Removing the words ''or its predecessor orders'' in paragraph (e) introductory text;

e. Removing ''and;'' at the end of paragraph (h)(6) and adding a period in its place; and

f. Removing paragraph (h)(7).

The revisions read as follows:

§ 1033.7 Pool plant.

* * * * *

(c) * * *

(2) The operator of a supply plant located within the marketing area may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant's qualifying shipments. Handlers may not use shipments pursuant to § 1033.13(c) to qualify plants located outside the marketing area.

* * * * *

(4) Shipments used in determining qualifying percentages shall be milk transferred or diverted and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

(d) * * *

(2) The 30 percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month. Shipments used in determining qualifying shipments in meeting this 30 percent delivery requirement shall be milk transferred or diverted and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants;

* * * * *

2. Section 1033.13 is amended by:

a. Revising paragraph (d)(2);

b. Redesignating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7);

c. Adding a new paragraph (d)(3); and

d. Revising newly designated paragraph (d)(4).

The revisions and additions read as follows:

§ 1033.13 Producer milk.

* * * * *

(d) * * *

(2) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of August through November;

(3) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of December through July if the requirement of paragraph (d)(2) of this section (§ 1033.13) in each of the prior months of August through November are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through November.

(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 60 percent in each of the months of August through February and 70 percent in each of the months of March through July.

* * * * *

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18923 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 00–105–1]

RIN 0579–AB36

Payments for Cattle and Other Property Because of Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding payments made in connection with animals and other property disposed of because of bovine tuberculosis to provide that the Animal and Plant Health Inspection Service will make payments to owners of dairy cattle and other property used in connection with a dairy business, and a dairy processing plant in the area of El Paso, TX, provided the owners agree to dispose of their herds, close their existing dairy operations, and refrain from establishing new cattle breeding operations in the area. This action is necessary to further tuberculosis eradication efforts in the United States and protect livestock not affected with bovine tuberculosis from the disease.

DATES: This interim rule is effective July 26, 2002. We will consider all comments that we receive on or before September 24, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–105–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–105–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–105–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (tuberculosis) is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, ''Tuberculosis'' and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), January 22, 1999, edition, which is incorporated by reference into the regulations in part 77. Additionally, the regulations in 9 CFR part 50 (referred to below as the regulations) provide for the payment of indemnity to owners of certain animals destroyed because of tuberculosis, in order to encourage destruction of animals that are infected with, or at significant risk of being infected with, the disease.

Scope of This Interim Rule

In this interim rule, we are adding provisions to part 50 of the regulations to allow APHIS to make payments to owners of dairy cattle and other property in the area of El Paso, TX, in connection with the disposal of their herds and dairy operations, under the condition that the owners agree to dispose of their herds, close their existing dairies and refrain from establishing new cattle breeding operations in the area. The provisions of this interim rule apply to owners of dairy herds and other property only within a specified area in Texas. All other animals in the United States destroyed because of tuberculosis will continue to be eligible for indemnity in accordance with the existing regulations. To make this clear, we are designating the existing regulations in part 50 as subpart A, and are designating the provisions we are adding in this interim rule (new §§ 50.17 through 50.22) as subpart B of part 50. Additionally, we are adding language to § 50.2 to make clear our intent.

The action we are taking in this interim rule is part of a cooperative plan with the State of Texas to create a buffer zone along the United States-Mexico border that will contain no cattle that are at significant risk of being infected with tuberculosis. Since 1985, State animal health officials in Texas, along with APHIS, have been taking measures to eliminate tuberculosis in dairy herds in the El Paso area. (Tuberculosis has been diagnosed in only one herd of beef cattle in the area, and that infection was due to an infected steer from Mexico that was added to the herd. We believe the lack of tuberculosis infection in beef cattle is due to the relatively short time such cattle remain on a premises, compared to dairy cattle.) As a result of these eradication efforts, dairy herds in the El Paso area have become free of tuberculosis, only to be reinfected despite the application of sound agricultural practices designed to prevent reintroduction of the disease.

Recent epidemiological findings, including the DNA fingerprinting of tuberculosis isolates, have indicated that the reinfection of the dairy herds near El Paso is strongly correlated with the proximity of tuberculosis-infected herds in the area of Ciudad Juarez, Mexico. Based on this evidence, we consider it likely that any dairy herds that remain in the El Paso area will continue to be reinfected with tuberculosis, despite U.S. efforts to eradicate the disease.

Because of this situation, APHIS, in conjunction with State animal health officials in Texas, has determined that, in order to further the eradication of tuberculosis in the United States, it is necessary to remove all bovine dairy herds from the El Paso area. To make this possible, APHIS has secured funding to make payments to the owners of those dairy operations, including payments to owners for the loss of their animals and other property, for the cessation of their dairy operations, for the cessation of the use of their dairy properties for dairy operations, and for relocation of a dairy facility.

Eligibility for Payment

New § 50.17(a) provides that owners of dairy operations, including owners of dairy herds and other property, will be eligible for payment under the provisions of this rule if they meet all applicable requirements of the regulations and if their herds are located in the area in Texas circumscribed by the following boundaries: Beginning at the point where the Hudspeth-El Paso County line intersects U.S. Highway 62; then west along U.S. Highway 62 to the El Paso Toll Bridge; then southeast along the Rio Grande River to the Fort Hancock-El Porvenir Bridge; then northeast along spur 148 to Interstate 10; then northwest along Interstate 10 to the Hudspeth-El Paso County line; then north along the Hudspeth-El Paso County line to the point of beginning.

New § 50.17(b) provides that, to be eligible for payment under this interim rule, all owners of dairy operations, including owners of dairy herds and other property, within the area described above under the heading ''Eligibility for Payment'' must sign and adhere to an agreement with APHIS to do the following:

- Cease all dairy operations within the described area, and dispose of all sexually intact cattle on the dairy operation premises, no later than 2 years after all eligible owners have signed their respective agreements;
- Conduct no dairy farming or other dairy activity, including the rearing of any breeding cattle, but not including the grazing or feeding of steers and spayed heifers intended for terminal market, within the area described above until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements;
- Allow a covenant to be placed on the property where the dairy operations were conducted that will prevent the establishment of any cattle breeding operations (not including the grazing or feeding of steers and spayed heifers intended for terminal market) on the premises until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less then 20 years after all eligible owners have signed their respective agreements;
- Maintain responsibility for all cattle on the premises used in the dairy operation until those animals are removed from the premises;
- Make all arrangements for the removal of all sexually intact cattle from the premises; and
- Notify APHIS officials of the intended removal of all sexually intact cattle from the premises and provide APHIS officials with the opportunity to monitor and evaluate the removal operations.
- Such other terms, provisions, and conditions as agreed by each owner and APHIS.

Time Limit for Disposal of Cattle and Future Restrictions

There are approximately 12,200 dairy cattle in the described El Paso area. We are providing up to 2 years for owners to dispose of all cattle from dairy operations in the area to minimize any economic effects such disposal might otherwise have on the beef industry in that region.

We are requiring a minimum 20-year period without cattle breeding operations because reinfection of herds in the El Paso area has been linked to the existence of tuberculosis in nearby regions of Mexico, and we consider 20 years to represent a minimum reasonable time frame for the eradication of tuberculosis from those Mexican regions. Additionally, we believe it will take at least 20 years of heightened surveillance in the United States to confirm what we anticipate to be the complete eradication of tuberculosis in livestock in the United States in the next several years. Until that eradication is confirmed, we believe it is necessary to continue to prohibit the breeding of cattle in the El Paso region.

Amount of Payment

New § 50.17(c) provides that we will make payments for cattle and other property based on the following rates:

- For milking cows, an amount not to exceed $2,922 per animal; and
- For heifers, an amount not to exceed $834 per animal.

We used the income approach to determine the value to be paid for disposal of the herds and the cessation of dairy operations and the cessation of use of the properties for dairy operations. We calculated the net present value (NPV) of a milking cow. To calculate the NPV, we used discounted cash flow analysis, which takes into account the quantity, variability, and duration of the forecasted income stream over a specified income projection period, assuming 15 years' worth of expected remaining life of the dairy facility.

The valuation model can be expressed in the following equation form, where r = discount rate, I = annual income per cow, and y = number of years in the discount period:

$$NPV = (1 - 1/((1 + r)^y))/r*I$$

To calculate NPV using the above equation, we had to determine the annual income per cow, the discount rate, and the number of years income is paid. We discuss each of these factors below. For more information regarding our analysis, please contact Terry Disney, APHIS Center for Epidemiology and Animal Health, at 970–490–8000.

Annual income per milking cow. There was some variation in the actual annual net income per milking cow over the past several years among the dairy operations in the El Paso area. Taking this variation into account, we used $320 as the annual net income per milking cow.

Discount rate. The discount rate used in the present value calculation is 7 percent, which is the risk-adjusted rate estimated to be appropriate in this situation.

Number of years income is paid. For the purposes of our equation, we used a term of 15 years.

Difference between discounted fair market value and salvage value. We added a small differential (just under $8 per head) to the NPV to account for the difference between the fair market value of the milking cow discounted over 15 years (because our income calculations assumed that the size of the milking

cow herd would remain constant for 15 years) and the amount we estimated the owner would receive as salvage for a dairy cow that was sent to slaughter.

Value of heifers. Some of the dairy operations in the El Paso area include heifers that are not yet being used for milk production. We calculated the value of such heifers by subtracting from the present fair market value of each heifer the amount an owner could expect to receive if the heifer were sold for slaughter.

New § 50.17(d) provides that any dairy cattle added to a premises after the date an owner has signed the agreement discussed above will not be eligible for payment and must be disposed of within 2 years after all eligible owners have signed the agreement.

Amount of Additional Payments

New § 50.17(e) provides amounts for additional payments for two dairy facilities located within the geographic area covered by this interim rule.

Paragraph (e)(1) of § 50.17 provides for payment for relocating the equipment of a reverse osmosis plant. This plant removes water from milk. The plant was located on the premises of one of the dairy farms within the area covered by this interim rule. It would no longer be a viable operation at that location because of the removal of all dairy herds in the area. APHIS will pay the documented costs of relocating the plant's equipment to a location outside the area covered by this interim rule, up to a maximum of $675,000.

Paragraph (e)(2) of § 50.17 provides for payment for the permanent closure of a fluid milk processing plant that is located within the area covered by this interim rule. The fluid milk processing plant processes fresh milk. In determining the amount of payment that will be made for the processing plant, we used the following formula, where $Cost^G$ = amount to be paid by APHIS; ebitd = annual earnings before interest, taxes, and depreciation; and x = the industry standard multiple that is paid for similar businesses (an industry standard multiple takes into account the potential effects on the sale of a company of factors such as the age of the facility, its profitability, and the desirability of markets):

$$Cost^G = ebitd * x - Salvage - Goodwill$$

In applying this formula to the fluid milk processing plant, we considered ebitd to be the average of the plant's last 4 years' earnings, as shown on the company's tax records. We estimated the industry standard multiple in this case to range from 4.5 to 5.25. We based salvage value on appraisals, and we also estimated goodwill (*e.g.,* the value of name recognition and customer base and loyalty). Using these figures, we determined that an amount not to exceed $950,000 was appropriate for the permanent closure of the milk processing plant.

APHIS will make payment to the owners of the fluid milk processing plant in the same manner and at the same times, on a pro rata basis, as we make payments to such owners for their dairy cattle and other property.

Identification and Disposal of Cattle

In order to allow for traceback, if necessary, of cattle disposed of under this interim rule, we are providing in new § 50.18(a) that all cattle so disposed of must travel from the premises of origin to their final destination with an approved metal eartag, supplied by APHIS or the State representative, bearing a serial number and attached to each animal's left ear.

New § 50.18(b) provides that cattle disposed of in accordance with this interim rule must be shipped under permit either (1) directly to slaughter at a Federal or State inspected slaughtering establishment or (2) directly to a livestock market and, under the supervision of an APHIS representative or State representative, through a livestock market pen that is dedicated to and marked exclusively for use for animals moved to slaughter, and then directly to slaughter at a Federal or State inspected slaughtering establishment.

Report of Salvage Proceeds

In order to confirm that dairy cattle affected under this interim rule are disposed of in some way, we are requiring in new § 50.19 a report of the salvage derived from the sale of each animal for which a claim for payment is made. We are requiring that the salvage form be one that is acceptable to APHIS and that is signed by the purchaser or by the selling agent handling the animals. If the cattle are sold by the pound, the salvage form must show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the cattle are not sold on a per-pound basis, the salvage form must show the net purchase price of each animal, accompanied by an explanation showing how that amount was derived. If the animals are not disposed of through regular slaughterers or through selling agents, the owner must furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him or her and must certify that the amount is all he or she has received or will receive as salvage for the animals. The original of the salvage form or the affidavit of the owner must be furnished to the veterinarian in charge within 3 months of the destruction of the animals, if it is not already in his or her possession. Disposal of cattle by burial, incineration, or other means must (1) be supervised by an APHIS or State representative, who will prepare and transmit to the veterinarian in charge a report identifying the animals and showing their disposition; or (2) be documented by an affidavit of the owner identifying the animals and describing their disposition, a copy of which must be provided to the veterinarian in charge within 3 months of the destruction of the animals. The salvage form, disposal certificate, or affidavit will be for information purposes only and will have no effect on the amount of any payment due.

Claims for Payment

New § 50.20 sets forth procedures an owner must follow to submit a claim for payment. In order to coordinate claims, the timing for all claims for payment is based upon disposal of cattle, regardless of whether the payments are attributable to cattle or other property as agreed to by APHIS and the owner. These provisions are largely the same as those set forth in § 50.12 of the existing regulations for claiming indemnity for cattle, bison, captive cervids, or swine destroyed because of tuberculosis.

Under subpart B of part 50, claims for payment must be presented on payment claim forms furnished by APHIS. The payment claim forms may be obtained from the APHIS veterinarian in charge. On the claim form, the owner of the animals or other property must certify that the animals or other property are, or are not, subject to any mortgage. If the owner states that there is a mortgage, the claim form must be signed by the owner and by each person holding a mortgage, who must agree that the person specified on the claim form may receive any payment due. The APHIS veterinarian in charge or the official designated by the veterinarian in charge will record on the claim form the amount of payment that appears to be due the owner, and the owner will be furnished a copy of the APHIS payment claim form. The veterinarian in charge or official designated by the veterinarian in charge will then forward the APHIS payment claim form to the appropriate APHIS official for further action on the claim. Section 50.20 provides that the Department will not pay any costs arising from the holding of the animals pending slaughter or for trucking or other transportation costs, yardage, commission, slaughtering charges, or for

any other costs related to having the cattle slaughtered.

Payments

New § 50.21 provides that we will make payments at 90-day intervals, with the first payment to be made no earlier than 30 days after all owners eligible for payment have signed their respective agreements as required under § 50.17(b) of this interim rule. The Department will determine the amount to be paid to each owner in each payment by multiplying the total agreement amount for that owner by a fraction arrived at by dividing the initial census number of dairy cattle for the respective owner into the number of dairy cattle that have been removed from the owner's herd during that payment period. From this amount, 10 percent will be withheld until all animals in the herd have been disposed of and the requirements of this subpart have been met. The payments to owners of property other than animals will be determined by multiplying the total agreement amount for that other property times the same ratio that is used for the herd that is related to that other property, minus the 10 percent withholding.

We will not make final payments until the premises used for dairy operations have been without sexually intact cattle for at least 30 days and have been inspected by APHIS officials and been found to be free of manure, except for non-solid areas such as lagoons, and free of all feedstuffs that are not in barns, containers or feeders.

Claims Not Allowed

New § 50.22 provides that we will not allow claims for payment under this interim rule if the claimant has failed to comply with any of the requirements established by this interim rule, or if there is substantial evidence, as determined by the Administrator, that the claimant has in any way been responsible for any attempt to obtain payment unlawfully or improperly.

Definitions

We are adding definitions of *heifer* and *milking cow* to § 50.1 to read as follows:

Heifer. A female dairy cow that has not given birth.

Milking cow. A female dairy cow that has given birth and is being used for milk production.

Emergency Action

This rulemaking is necessary on an emergency basis to ensure that dairy cattle in the El Paso, TX, area, which are at significant risk of being infected with tuberculosis, are removed from that area as soon as possible. This prompt removal is necessary to help prevent the spread of bovine tuberculosis in the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. That document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this rule, we have prepared an economic analysis that provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential effects on small entities as required by the Regulatory Flexibility Act. The analyses are set forth below.

Cost-Benefit Analysis: Background

This interim rule provides for specified owners of dairy operations in the area of El Paso, TX, to be paid for the disposal of their herds and the cessation of their operations and the cessation of the use of their dairy properties for dairy operations. Past efforts to permanently eliminate tuberculosis from the El Paso milkshed dairies have been unsuccessful due to the proximity of this area to known tuberculosis-infected dairies in Ciudad Juarez, Mexico. Elimination of the Texas El Paso milkshed dairies would provide a benefit in the form of a permanent buffer zone that would serve to prevent the reintroduction of bovine tuberculosis from the Ciudad Juarez area into U.S. dairy herds. Ten dairy farms with 12,203 milking cows are located in the proposed buffer zone. Payment is needed to obtain producers' voluntary cooperation to cease their dairy operations permanently. With this payment, these producers are expected to neither gain nor lose financially, and the economic impact upon them can be considered neutral.

Additionally, payment will also be offered to one dairy entity in connection with the closure of its fluid milk processing operation, and to another for the relocation of its reverse osmosis equipment. These operations are located on or associated with two of the affected farms in the buffer zone. The discussion below describes how payment for these items is calculated, the total amount of payment expected to be paid to affected owners in El Paso, and impacts of the interim rule.

Milk Production in El Paso

El Paso is one of the top five milk producing counties in Texas and is located in the milkshed of the Southwest Federal Milk Marketing Order, which includes all of New Mexico and Texas. In El Paso County, milk production yielded more cash than any other agricultural product, accounting for about 27 percent of total sales in 2000. The 10 affected El Paso dairies produced about 258 million pounds of milk in 2000 (or a 5 percent share of the milk production of the State of Texas), valued at about $34 million.

Payment Calculation

In order to determine the value to be paid, an appraisal method was utilized by which the future earnings of the 10 affected dairy farms are estimated. These contributions are then discounted to present value over a period of 15 years, the assumed useful life of these profitable dairy farms.[1]

A discount rate of 7 percent was applied to estimates of future producer returns to risk, management, and capital investment. This rate is higher than the risk-free rate (approximately 4.9 percent) that the U.S. Government pays on Series I bonds, reflecting some degree of risk and uncertainty.

Future farm earnings are based on the returns per milking cow. Some of the 10 dairy herds have only milking cows and replacement animals (calves and heifers). Others have additional calves and heifers in excess of replacement needs. APHIS has historically used the fair market value (FMV) appraisal approach to evaluate the value of animals to be indemnified. With this approach, the market value of assets is evaluated by an appraiser(s) and the amount reimbursable to the producer is based on this appraisal. This method is suited to situations where established markets are available and animals are

[1] Armstrong, Dennis. *Arizona Dairy Feasibility Study for Southeast Arizona,* University of Arizona, Department of Animal Science, 1999. This report suggests that modern dairies are obsolete 10 to 15 years after after establishment due to urban encroachment, or technical obsolescence.

being removed and replaced with other animals on the farm. In the current situation, APHIS is requiring permanent cessation of dairying operations on the premises. Therefore, payment is being made for the value of animals plus the value of the cessation of dairy operations plus the value of the cessation of use of the dairy properties for dairy operations. The appraisal methodology used to determine the value is based on documented production records of annual earnings before interest, taxes, and depreciation (ebitd) generated per milking cow. Using this method, the ebitd value of a milking cow is estimated to be $320 per year, or a present value of $2,915 per animal over 15 years. The same valuation method is applied to each farm.

In addition, this interim rule requires each affected producer to sell all animals in the dairy herd to a terminal market for slaughter. The proceeds from this sale are commonly referred to as the salvage value. However, assuming that herd size and structure would be the same 15 years from now (individual animals may change, but the distribution remains the same), most of the animals would still have remaining milking value. The determination of the value should, therefore, be based on the difference between the present value of his herd's FMV (productive worth) 15 years from now and the herd's current salvage value. In sum, the value is composed of the present value of the net income stream per cow ($2,915), plus the difference between the discounted fair market value per cow (about $508) and the assumed salvage value per cow ($500).

Seven of the ten affected dairy operations have heifers beyond the number needed as replacement animals. A portion of the value is, therefore, determined by subtracting from the current FMV of each heifer the amount an owner could expect to receive if the heifer were sold for slaughter. Thus, that portion of the value is estimated at about $834 per head.

The total payment amount to be paid to owners of dairy cattle and other property based upon 12,203 milking cows and 7,190 additional heifers is estimated at nearly $42 million. Eighty-six percent of this total payment is determined by milking cows, and the remaining 14 percent is determined by heifers in excess of replacement needs. Approximately 85 percent of the payments is allocable to 5 farms. The largest payment to an owner is over $12 million. Three owners receive less than $1 million each.

In addition to the 10 dairy farms that are being closed, two additional dairy operations are considered for payment on a case-by-case basis as part of the El Paso buffer zone payment package. The first case involves a reverse osmosis plant that is located on one of the affected farms. The plant, owned by a producer cooperative, would cease operation in its current location and be moved to an area outside the buffer zone. Payments would cover the cost of relocating the equipment and would be limited to qualifying expenditures submitted with receipts. It is estimated that these expenditures would include costs of a reverse osmosis milk unit, silos, boiler and refrigeration equipment, and transport expense. The total amount eligible for payment is estimated at $675,000. This amount does not include the cost of a new building (estimated at $300,000), which will be absorbed by the cooperative.

The second case involves the closure of a dairy processing plant that has been in business for nearly 60 years. This plant processes fresh milk exclusively from one of the affected dairy farms, and with the closing of the latter, this niche market would no longer be commercially maintainable.

The model used to calculate payment for the closure of the processing plant relies on the industry standard framework for purchasing dairy facilities. The framework typically follows the following formula:

(1) $FMV = ebitd * x$,

where FMV represents the fair market value of the dairy plant, ebitd represents annual earnings before interest, taxes, and depreciation are removed, and x reflects the industry standard multiple that is paid for similar businesses.

As APHIS will not be taking possession of the processing plant, the initial formula (1) is therefore modified to reflect the ability of the plant owner to salvage any value remaining in the physical facilities once the plant no longer processes milk. The payment amount will be based on the following formula:

(2) $Cost^G = ebitd * x - Salvage$,

where $cost^G$ is the payment amount. The term salvage (salvage value) can be broken down into two parts: Traditional salvage value of buildings and equipment and the goodwill value that may or may not be marketable independently of the farm's brand name. The final formula for payment can be rewritten as:

(3) $Cost^G = ebitd * x - Salvage - Goodwill$.

In applying formula (3) to the processing plant, ebitd is the average earnings over the last 4 years, obtained directly from tax records. The value of the multiple x was determined based on extensive conversations with industry contacts experienced with similar dairy plant buyouts. Estimates of salvage value of the building and equipment were obtained from an auction house. Goodwill is a difficult concept to quantify, but estimates were made using information from various industry contacts.

Several scenarios for payment were calculated for the processing plant. These scenarios resulted in similar overall estimates of payment. The average compensation estimate was $950,000 for the closure of the processing plant.

In sum, the total amount to be paid by APHIS for the closure of 10 El Paso dairy farm operations and an associated processing plant, and the relocation of a reverse osmosis plant, is almost $44 million.

Impact of the Interim Rule

The impact of the rule on the 10 affected El Paso dairy farms is expected to be economically neutral as owners of the farms will be paid for their animals and other property and the cessation of operations. However, closure of these farms may indirectly affect interrelated activities in the county and/or State such as bottling plants and dairy products manufacturing plants in the area. These effects are expected to be small whether farms move away from Texas or relocate to other areas within Texas.

If the affected farms were to move away from Texas, bottling and dairy plants would likely be minimally impacted due to the close proximity of the affected area to milk-abundant counties of New Mexico. The lost milk production in El Paso will probably be offset over time by increases in milk production in the rest of Texas and New Mexico.

According to discussions with area market economists and with representatives of the Southwest Federal Milk Marketing Order, the farmers are likely to remain in the dairy business and would prefer to relocate to other areas of the State. In this case, the impact on the local economy would be similarly small over time. Therefore, we do not anticipate any long-term increases in milk prices paid by milk processors or retail prices paid by consumers due to the buyout. Furthermore, the impact on beef prices of sending 12,200 dairy cattle to slaughter under this interim rule will be mitigated by the 2-year period allowed to complete depopulation.

Texas has not been able to achieve Statewide tuberculosis accredited-free status because efforts to permanently eliminate tuberculosis from the El Paso dairies has been unsuccessful. The loss to Texas producers from not having accredited-free status, not only for the dairy enterprises, but for the beef cow and cattle-on-feed enterprises, was estimated to be $260 million for a 5-year time horizon. This loss was calculated according to the methodology adapted from Leefers *et al.* (1998) that estimated the economic impact on Michigan of losing its tuberculosis accredited-free status.[2] The impact of the higher producer costs attributed to stricter tuberculosis testing regimen in that study is measured as the difference between the present value of sales with accreditation and without accreditation. The loss to Texas producers of not having accredited-free status is calculated by extrapolating from the percent decline in present value of sales for each of the three types of cattle enterprises (dairy enterprises, beef cow, and cattle-on-feed), as calculated by Leefers *et al.* for Michigan.

Even without taking trade implications of tuberculosis into consideration, the costs associated with the El Paso buyout are relatively small compared to the benefits arising from reducing the risk of spreading tuberculosis to other dairy and livestock herds in other parts of Texas, New Mexico, and other States.

Regulatory Flexibility Analysis

The Small Business Administration defines small dairy cattle and milk production facilities (North American Industry Classification System code 112120) as those earning $750,000 or less in annual receipts. The 10 dairies affected by this rule produced about 258 million pounds of milk in 2000, valued at about $34 million. Assuming an annual milk production per cow of 20,000 pounds, only 1 of the 10 dairy farms has annual gross revenues of less than $750,000. In any event, all 10 dairy farms will be fully paid for the disposal of their herds and other property and cessation of operation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

[2] Leefers, Larry, John Erris, and Dennis Propst. ''*Economic Consequences Associated with Bovine Tuberculosis in Northeastern Michigan*,'' Michigan State University, September 1977 (revised February 1998).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0193 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 00–105–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–105–1 and send your comments within 60 days of publication of this rule.

Under this interim rule, owners of dairy cattle herds and dairy operations in the area of El Paso, Texas, will be eligible for payment from the Department for disposal of their herds and other property and for cessation of their dairy operations and relocation of a dairy plant's equipment. Implementing this payment program will entail the use of a number of information collection activities, including an agreement to cease operations, metal eartags, movement permits, salvage reports, salvage and disposal affidavits, and payment claim forms. We are soliciting comments from the public, as well as from affected agencies, concerning our information collection and recordkeeping requirements. These comments will help us:

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

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

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

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.483 minutes per response.

Respondents: Owners of dairy operations, owners and operators of livestock markets and slaughtering plants, cattle purchasers and selling agents, State animal health authorities, and accredited veterinarians.

Estimated annual number of respondents: 95.

Estimated annual number of responses per respondent: 6.210526.

Estimated annual number of responses: 590.

Estimated total annual burden on respondents: 875 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, we are amending 9 CFR part 50 as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

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

Authority: 7 U.S.C. 8304–8306, 8308, 8310, and 8315; 7 CFR 2.22, 2.80, and 371.4.

2. Section 50.1 is amended by revising the introductory text and adding definitions of *heifer* and *milking cow*, in alphabetical order, to read as follows:

§ 50.1 Definitions.

For the purposes of this part, the following terms mean:

* * * * *

Heifer. A female dairy cow that has not given birth.

* * * * *

Milking cow. A female dairy cow that has given birth and is being used for milk production.

* * * * *

3. The heading ''Subpart A—General Indemnity'' is added immediately before § 50.2.

4. Section 50.2 is revised to read as follows:

§ 50.2 Applicability of this subpart; cooperation with States.

(a) The provisions of this subpart apply to all payments made by the Department for the destruction of animals because of tuberculosis, except as specifically provided in subpart B of this part.

(b) The Administrator cooperates with the proper State authorities in the eradication of tuberculosis and pays Federal indemnities for the destruction of cattle, bison, captive cervids, or swine affected with or exposed to tuberculosis.

5. A new subpart B is added to read as follows:

Subpart B—Dairy Cattle and Facilities in the El Paso, Texas, Region

Sec.

50.17 Payment.
50.18 Identification and disposal of cattle.
50.19 Report of salvage proceeds.
50.20 Claims for payment.
50.21 Schedule of payments.
50.22 Claims not allowed.

§ 50.17 Payment.

(a) *Eligibility for payment*. Owners of dairy operations, including owners of dairy cattle and other property used in connection with a dairy business or fluid milk processing plant, are eligible to receive payment from the Department under this subpart in connection with a buffer zone depopulation program due to tuberculosis, provided the owners meet all applicable requirements of this subpart and the dairy cattle herd is within the area circumscribed by the following boundaries: Beginning at the point where the Hudspeth-El Paso County line intersects U.S. Highway 62; then west along U.S. Highway 62 to the El Paso Toll Bridge; then southeast along the Rio Grande River to the Fort Hancock-El Porvenir Bridge; then northeast along spur 148 to Interstate 10; then northwest along Interstate 10 to the Hudspeth-El Paso County line; then north along the Hudspeth-El Paso County line to the point of beginning.

(b) To be eligible for payment, each of the owners of dairy cattle and other property within the area described in paragraph (a) of this section must sign and adhere to an agreement with APHIS to do the following:

(1) Cease all dairy cattle operations within the described area and dispose of all sexually intact cattle on the dairy operation premises no later than 2 years after all eligible owners have signed their respective agreements;

(2) Conduct no dairy farming or other dairy activity, including the rearing of breeding cattle, but not including the grazing or feeding of steers and spayed heifers intended for terminal market, within the area described in paragraph (a) of this section until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(3) Allow a covenant to be placed on their properties where dairy operations have been conducted that will prevent the establishment of any breeding cattle operations (not including the grazing or feeding of steers and spayed heifers intended for terminal market) on the premises until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(4) Maintain responsibility for all cattle on the premises used in the dairy operation until those animals are removed from the premises;

(5) Make all arrangements for the removal of sexually intact cattle from the premises;

(6) Notify APHIS officials of the intended removal of all sexually intact cattle from the premises and provide APHIS officials with the opportunity to monitor and evaluate the removal operations; and

(7) Such other terms, provisions, and conditions as agreed by each owner and APHIS.

(c) *Amount of payment for cattle and other property*. Upon approval of a claim submitted in accordance with § 50.20 of this subpart, owners eligible for payments under paragraph (a) of this section will receive payments for cattle and other property, the amount of which is determined by the following rates:

(1) For milking cows, an amount not to exceed $2,922 per animal; and

(2) For heifers, an amount not to exceed $834 per animal.

(d) Any dairy cattle added to a premises after the date an owner has signed the agreement required under paragraph (b) of this section will not be included in the rate calculation in paragraph (c) of this section and must be disposed of within 2 years after all eligible owners have signed their respective agreements.

(e) *Amount of payment for certain other property*. In addition to the amounts paid under paragraph (c) of this section, amounts will be paid as follows:

(1) For expenses in relocating equipment of a reverse osmosis plant in El Paso County, TX, an amount equal to the costs of relocating the plant's equipment, not to exceed $675,000.

(2) In conjunction with the permanent closure of a fluid milk processing plant in El Paso County, TX, an amount not to exceed $950,000, with payment to be made in the same manner and at the same times, on a pro rata basis, as payments are made to such owners for their dairy cattle and other property.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.18 Identification and disposal of cattle.

(a) All dairy cattle disposed of under this subpart must travel from the premises of origin to their final destination with an approved metal eartag, supplied by APHIS or the State representative, bearing a serial number and attached to each animal's left ear.

(b) Dairy cattle disposed of under this subpart must be shipped under permit either:

(1) Directly to slaughter at a Federal or State inspected slaughtering establishment; or

(2) Under permit directly to a livestock market and, under the supervision of an APHIS representative or State representative, through a livestock market pen that is dedicated to and marked exclusively for use for animals moved to slaughter, and then directly to slaughter at a Federal or State inspected slaughtering establishment.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.19 Report of salvage proceeds.

A report of the salvage derived from the sale of each animal for which a claim for payment is made under this subpart must be made on a salvage form acceptable to APHIS that must be signed by the purchaser or by the selling agent handling the animals. If the cattle are

sold by the pound, the salvage form must show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the cattle are not sold on a per-pound basis, the net purchase price of each animal must be stated on the salvage form and an explanation showing how the amount was arrived at must be submitted. In the event the animals are not disposed of through regular slaughterers or through selling agents, the owner must furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him or her and must certify that such amount is all he or she has received or will receive as salvage for the animals. The original of the salvage form or the affidavit of the owner must be furnished to the veterinarian in charge within 3 months of destruction of the animals, if such document is not already in his or her possession. Disposal of cattle by burial, incineration, or other means must be supervised by an APHIS or State representative, who will prepare and transmit to the veterinarian in charge a report identifying the animals and showing their disposition, or be documented by an affidavit of the owner that identifies the animals and describes their disposition. The owner must provide a copy of the affidavit to the veterinarian in charge within 3 months of destruction of the animals. The salvage form, disposal certificate, or affidavit will be for information purposes only and will have no effect on the amount of any payment due.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.20 Claims for payment.

Claims for payment, other than for reimbursement of relocation expenses of the reverse osmosis dairy plant, must be presented on payment claim forms furnished by APHIS.[3] On the claim form, the owner must certify that the animals or other property are, or are not, subject to any mortgage. If the owner states that there is a mortgage, the claim form must be signed by the owner and by each person holding a mortgage on the cattle or other property, who must agree that the person specified on the claim form may receive any payment due. The APHIS veterinarian in charge or the official designated by him or her will record on the claim form the amount of payment that appears to be due to the owner, and the owner will be furnished a copy of the APHIS payment claim form. The veterinarian in charge or official designated by him or her will then forward the APHIS payment claim form to the appropriate APHIS official for further action on the claim. The Department will not pay any costs arising from the holding of the cattle pending slaughter, or for trucking and other transportation costs, yardage, commission, slaughtering charges, or for any other costs related to having the cattle slaughtered. The owner of the reverse osmosis plant must submit copies of the relevant documentation for relocation of equipment to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579–0193)

§ 50.21 Schedule of payments.

(a) The Department will make payment, other than for reimbursement of relocation expenses of the equipment of the reverse osmosis plant, at 90-day intervals. The first payment will be made no earlier than 30 days after all owners eligible for payment have signed their agreements required under § 50.17(b). The Department will determine the amount to be paid to each owner in each payment by multiplying the total agreement amount for that owner by a fraction that is arrived at by dividing the initial census number of dairy cattle for the respective owner into the number of dairy cattle that have been removed from the owner's herd during that payment period. From this amount, 10 percent will be withheld until all animals in the herd have been disposed of and the requirements of this subpart have been met. The payments to other property owners will be determined by multiplying the total agreement amount for that other property times the same ratio as for the herd related to that other property, minus 10 percent. The Department will make payment for reimbursement of relocation expenses of the reverse osmosis plant within 30 days after the relocation of the plant is completed and the owner of the plant has submitted to APHIS all documentation of the costs of the relocation.

(b) The Department will not make final payments until the premises used for dairy operations have been without sexually intact cattle for at least 30 days and until APHIS has inspected the premises and has found them to be free of manure, except for non-solid areas such as lagoons, and free of all feedstuffs that are not in barns, containers or feeders.

§ 50.22 Claims not allowed.

The Department will not allow claims for payment if the claimant has failed to comply with any of the requirements of this subpart, or there is substantial evidence, as determined by the Administrator, that the claimant has been responsible for any attempt to obtain payment funds for such cattle or other dairy property unlawfully or improperly.

Done in Washington, DC, this 19th day of July 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–18701 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–34–U

[3] Claim forms may obtained from the veterinarian in charge. The location of the veterinarian in charge may be obtained by writing to National Animal Health Program VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737, or by referring to the local telephone book.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–202–12504]

Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the contact information for a final rule published in the **Federal Register** June 21, 2002 regarding improved flightdeck security on passenger-carrying aircraft and some cargo aircraft.

In rule FR Doc 02–15524, published on June 21, 2002 (67 FR 42450), second column page 42450, the **FOR FURTHER INFORMATION CONTACT** section is corrected to read as set forth below.

FOR FURTHER INFORMATION CONTACT: For part 25 issues, contact Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425– 227–1149; e-mail: *jeff.gardlin@faa.gov.* For part 129 issues, contact Michael E. Daniel, International Liaison Staff, AFS–50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–4510; facsimile (202) 385–4561; e-mail: *mike.e.daniel@faa.gov.*

Issued in Washington, DC on July 18, 2002.

Richard McCurdy,

Manager Airworthiness Law Branch.

[FR Doc. 02–18762 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–43–AD; Amendment 39–12797; AD 2002–13–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2002–13–09 applicable to Pratt & Whitney JT8D–200 engines that was published in the **Federal Register** on July 3, 2002 (67 FR 44527). In the regulatory information, Table part B., Parts Requiring Inspection, one item under Description and one item under Engine Manual are incorrect. This document corrects these items. In all other respects, the original document remains the same.

EFFECTIVE DATE: July 3, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive FR Doc, 02–16535 applicable to Pratt & Whitney JT8D–200 series turbofan engines, was published in the **Federal Register** on July 3, 2002 (67 FR 44527). The following correction is needed:

§ 39.13 [Corrected]

On page 44528, in the third column, in the regulatory information, Table part B., Parts Requiring Inspection, first column, the last Description ''Disk, 4th Stage Turbine—'' is corrected to read ''Disk, 4th Stage Turbine—All P/N's'.

On page 44528, in the third column, in the regulatory information, Table part B., Parts Requiring Inspection, second column, the sixth Engine Manual Section ''2–53–16'' is corrected to read ''72–53–16'.

Issued in Burlington, MA, on July 22, 2002.

Peter A. White,

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

[FR Doc. 02–19034 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–19–AD; Amendment 39–12792; AD 2002–13–04]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2000–NE–19 applicable to Teledyne Continental Motors O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines that was published in the **Federal Register** on June 27, 2002 (67 FR 43230). The superseded AD number was inadvertently omitted from the regulatory information, paragraph 2. of § 39.13 [Amended]. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7870, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule; request for comments airworthiness directive FR Doc. 02–16174 applicable to Teledyne Continental Motors O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines, was published in the **Federal Register** on June 27, 2002 (67 FR 43230). The following correction is needed:

§ 39.13 [Corrected]

On page 43231, in the second column, § 39.13 Amended, paragraph 2. in the seventh line, ''2000–NE–19–AD.'' is corrected to read ''2000–NE–19–AD. Supersedes AD 2000–11–51''.

Issued in Burlington, MA, on July 22, 2002.

Peter A. White,

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

[FR Doc. 02–19035 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–4]

Amendment to Class E Airspace; Norton, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Norton, KS.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 20, 2002 (67 FR 35426). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 3, 2002. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on July 17, 2002.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–19000 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5f, 31, and 602

[TD 9010]

RIN 1545–AW48

Information Reporting Requirements for Certain Payments Made on Behalf of Another Person, Payments to Joint Payees, and Payments of Gross Proceeds From Sales Involving Investment Advisors

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations

SUMMARY: This document contains regulations under section 6041 that provide information reporting requirements for escrow agents and other persons making payments on behalf of another person, clarify who is the payee for information reporting purposes if a check or other instrument is made payable to joint payees, and clarify the amount to be reported. This document also contains regulations under section 6045 that incorporate the provisions of temporary regulations, which are removed, and that remove investment advisors from the list of exempt recipients.

DATES: *Effective date:* These regulations are effective January 1, 2003.

Applicability dates: For dates of applicability, see §§ 1.6041–1(j), 1.6045–1(c)(3)(C)(xii), 1.6049–4(a)(2), and 31.3406(a)–2(d).

FOR FURTHER INFORMATION CONTACT: Nancy L. Rose (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1705. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimate of the reporting burden in § 1.6041–1 is reflected in the burden of Form 1099–MISC. The estimate of the reporting burden in § 1.6045–1 is reflected in the burden of Form 1099–B.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to the 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.

Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 5f) and Employment Tax Regulations (26 CFR part 31). These regulations finalize proposed regulations relating to payments to joint payees, payments made on behalf of another person, and payments of gross proceeds from sales involving investment advisors. A notice of proposed rulemaking (REG–246249–96) was published in the **Federal Register** (65 FR 61292) on October 17, 2000. A public hearing was held on February 7, 2001, at which two commentators presented oral comments. The IRS also received other written comments responding to the notice of proposed rulemaking. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

1. Payments Made on Behalf of Another Person

Comments were received requesting further clarification as to the meaning of the terms *management or oversight functions* and *significant economic interest* in § 1.6041–1(e)(1) of the proposed regulations. In response to these comments, the final regulations add language that was included in the preamble to the proposed regulations, explaining that a person who merely writes checks at another's direction is not exercising management or oversight with respect to the payment and that a person has a significant economic interest in a payment when such interest would be compromised if the payment were not made.

One commentator stated that an agent cannot perform management or oversight functions in connection with payments it receives and remits to its principal, and, therefore, an agent for a payee could never be required to report a payment to the payee under this standard. The commentator recommended that § 1.6041–1(e)(1) of the proposed regulation be revised to apply only to payments made by agents to third parties.

The determination of whether a person performs management or oversight functions with respect to a payment made on behalf of another, or has a significant economic interest in connection with such payment, is a factual one. Whether an agent has a reporting obligation under these standards must, therefore, be determined in each instance based on the particular facts and circumstances. The standards set forth in the proposed regulations are intended to apply to all persons making payments on behalf of another, whether they are making such payments on behalf of the payor or payee in a transaction. In keeping with the need for uniformity and consistency in this regard, the regulations also amend § 31.3406(a)–2 to eliminate the current distinction between payor agents and payee agents with respect to the obligation to backup withhold on payments. Therefore, while in some cases an agent for a payee may not be required to report a payment to its principal, the final regulation does not adopt the commentator's suggestion to eliminate the potential applicability of the regulation to all such payments.

With respect to one type of payee agent, however, the final regulation does contain an exception to the rules set forth in paragraph (e)(1). The final regulation adds paragraph (e)(3) exempting from information reporting payments made by an employee to his employer, in recognition of the principle that the employee received such payment from a third party and remitted it to his employer in the course of his employment. *Example 11* is added to illustrate this exception.

Comments were also received with respect to special reporting exceptions. One commentator asked that the current rule with respect to financial institutions be retained. The proposed regulations removed § 1.6041–3(n), which provided that banks making payments on an infrequent and isolated basis would not be subject to the reporting requirements. Banks will therefore now be subject to the same standards as other persons in determining whether they have an obligation to report payments. If a bank

exercises management or oversight functions over a payment, or has a significant economic interest in the payment, it will have a reporting obligation regardless of how frequently it makes such payments. Although this is a change that imposes a new reporting burden on financial institutions, the burden is no different than the one that applies to other persons, and the final regulations therefore do not adopt this suggestion.

Another commentator asked that we eliminate the reporting requirements for real estate agents, found in § 1.6041–3(d), as they conflict with the proposed regulations under § 1.6041–1. The proposed regulations made conforming amendments to § 1.6041–3(d), but retained the existing provision that rent paid by real estate agents is reportable, by cross-reference to the provisions of § 1.6041–1(a). We believe it is appropriate to require such agents to report under these regulations; therefore, we decline to adopt this comment. The final regulations do, however, change the term *real estate agents* to *rental agents* to more accurately describe the type of person who would be collecting rent from a tenant and remitting it to a landlord.

One commentator asked that the regulations clarify that insurance companies do not have a ''significant economic interest'' in payments they make to third parties pursuant to contracts with policyholders. Because this is a factual determination which should be made on a case by case basis, this suggestion was not adopted in the final regulations.

Several commentators expressed concern that more than one person might report the same payment pursuant to these rules. One commentator stated that a service-recipient might be obligated to report the payment made on his behalf, while the person making the payment might also report it. Another commentator described a situation where funds were transferred through several parties involved in a construction project before reaching the ultimate payee and each of the parties might meet the management or oversight/significant economic interest standard for reporting the payments.

Several of the examples illustrate the correct reporting of a payment by the parties to a transaction. In the event that several parties might be viewed as meeting the tests for reporting under § 1.6041–1(e) of the regulations, the final regulations set forth the rule that the party closest in the chain to the payee must report the payment, unless the parties agree, in writing, that one of the other parties meeting the test for reporting will report the payment. *Example 12* has been added to § 1.6041–1(e) of the regulations to illustrate this rule. This provision is not intended to preclude the optional method to report under § 1.6041–1(e)(4) of the regulations.

A commentator suggested that in *Example 3,* dealing with an agent who performs real estate closings, we clarify that the term *settlement agent* can include a number of different persons who perform real estate closings, such as title companies or title insurance underwriters. Since these examples are meant to be illustrative only, and since any person making a payment on behalf of another person is subject to these regulations, it is not necessary to list all possible individuals who may be performing the functions described in this example. Therefore, the final regulations do not adopt this suggestion.

2. Amount To Be Reported

One commentator objected to the rule in § 1.6041–1(f) of the proposed regulations that the amount to be reported is the gross amount, before fees and other expenses are deducted. The commentator pointed out the conflicting case law with respect to the issue of whether attorneys fees are income to the client. The final regulations provide that in cases in which the gross amount is income, the gross amount should be reported regardless of any expenses, commissions or other obligations, including backup withholding, that were deducted from the amount before the check was issued. To assist taxpayers in determining whether the gross amount or some lesser amount is includible in a particular payee's income, the Commissioner may provide guidance in the Internal Revenue Bulletin with examples. *Example 1* in § 1.6041–1(f) has been modified to illustrate this rule.

In response to a comment, we have added a cross-reference to section 6045(f) of the Internal Revenue Code and the regulations thereunder in the examples in § 1.6041–1(f).

3. Obsolescence of Revenue Rulings

One commentator asked that we include a statement in the regulations or commentary that the regulations render obsolete any revenue rulings that are factually encompassed by the proposed rules and that all other revenue rulings pertaining to third party payments would remain in effect unless specifically deemed obsolete.

The preamble to the proposed regulations stated that ''Rulings that are factually encompassed by the proposed regulations will be obsoleted.'' A list of revenue rulings to become obsolete was included. The notice of proposed rulemaking also requested comments that identified other factually relevant rulings. No such comments were received. As the proposed regulations made clear that revenue rulings factually encompassed by the proposed regulations would be obsoleted and enumerated those rulings, there is no need to include this commentator's suggestion.

Another commentator recommended that Rev. Rul. 69–595 (1969–2 C.B. 242) and Rev. Rul. 70–608 (1970–2 C.B. 286), both of which were listed in the notice of proposed rulemaking as obsoleted by the proposed regulations, be obsoleted only to the extent they are inconsistent with the proposed regulations. The two revenue rulings cited contain guidance relating to the definition of medical service payments, which the commentator felt should be retained.

Rev. Rul. 70–608 is listed in the notice of proposed rulemaking as obsoleted only with respect to Situations 1, 2, and 5. Therefore, Situation 4 of the revenue ruling, which includes a description of medical service payments, was not obsoleted. Rev. Rul. 69–595 will likewise not be obsoleted with respect to the definition of medical service payments.

Effect on Other Documents

The following revenue rulings are obsolete as of January 1, 2003:

Rev. Rul. 93–70 (1993–2 C.B. 294)
Rev. Rul. 85–50 (1985–1 C.B. 345)
Rev. Rul. 77–53 (1977–1 C.B. 368)
Rev. Rul. 73–232 (1973–1 C.B. 541)
Rev. Rul. 70–608 (1970–2 C.B. 286), Situations 1, 2, and 5
Rev. Rul. 69–595 (1969–2 C.B. 242), except with respect to the definition of medical service payments
Rev. Rul. 67–197 (1967–1 C.B. 319)
Rev. Rul. 65–129 (1965–1 C.B. 519)
Rev. Rul. 64–36 (1964–1 C.B. 446)
Rev. Rul. 59–328 (1959–2 C.B. 379)
Rev. Rul. 55–606 (1955–2 C.B. 489)
Rev. Rul. 54–571 (1954–2 C.B. 235)

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. A final regulatory flexibility analysis under 5 U.S.C. section 604 has been prepared for the collection of information in this Treasury decision. This analysis is set forth in this preamble under the heading

''Final Regulatory Flexibility Analysis.'' Pursuant to section 7805(f), 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 business.

Final Regulatory Flexibility Analysis

The collection of information contained in § 1.6041–1(e) is needed to clarify the requirements for filing an information return under section 6041 when a person makes a payment on behalf of another person or to joint payees. The objectives of the proposed regulations are to provide uniform, practicable, and administrable rules under section 6041 for persons making payments on behalf of another person or to joint payees. The types of small entities to which the regulations may apply are small businesses. An estimate of the number of small entities affected is not feasible because of the large variety of entities and transactions to which the regulations may apply.

There are no known Federal rules that duplicate, overlap or conflict with these regulations. The regulations are considered to have the least economic impact on small entities of all alternatives considered.

The collection of information contained in § 1.6045–1(c)(3) will not have a significant economic impact on a substantial number of small entities. The regulations will relieve investment advisors of the requirement to make information returns under section 6045(a), and few, if any, financial custodians that may be affected by the regulations are small entities.

Drafting Information

The principal author of these regulations is Nancy L. Rose, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Parts 1 and 5f

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 5f, 31, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.6041–1 also issued under 26 U.S.C. 6041(a). * * *

Par. 2. Section 1.6041–1 is amended as follows:

1. In paragraph (b)(1), the second sentence is amended by removing the language ''paragraph (g)'' and adding the language ''paragraph (i)'' in its place.

2. Paragraph (c) is amended by adding two sentences after the penultimate sentence.

3. Paragraphs (e), (f), and (g) are redesignated as paragraphs (g), (h), and (i), respectively.

4. Adding new paragraphs (e), (f), and (j).

The additions read as follows:

§ 1.6041–1 Return of information as to payments of $600 or more.

* * * * *

(c) * * * A payment made jointly to two or more payees may be fixed and determinable income to one payee even though the payment is not fixed and determinable income to another payee. For example, property insurance proceeds paid jointly to the owner of damaged property and to a contractor that repairs the property may be fixed and determinable income to the contractor but not fixed and determinable income to the owner, and should be reported to the contractor. * * *

* * * * *

(e) *Payment made on behalf of another person*—(1) *In general.* A person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information under this section with respect to that payment if the payment is described in paragraph (a) of this section and, under all the facts and circumstances, that person—

(i) Performs management or oversight functions in connection with the payment (this would exclude, for example, a person who performs mere administrative or ministerial functions such as writing checks at another's direction); or

(ii) Has a significant economic interest in the payment (i.e., an economic interest that would be compromised if the payment were not made, such as by creation of a mechanic's lien on property to which the payment relates, or a loss of collateral).

(2) *Determination of payor obligated to report.* If two or more persons meet the requirements for making a return of information with respect to a payment, as set forth in paragraph (e)(1) of this section, the person obligated to report the payment is the person closest in the chain to the payee, unless the parties agree in writing that one of the other parties meeting the requirements set forth in paragraph (e)(1) of this section will report the payment.

(3) *Special rule for payment by employee to employer.* Notwithstanding the provisions of paragraph (e)(1) of this section, an employee acting in the course of his employment who makes a payment to his employer on behalf of another person is not required to make a return of information with respect to that payment.

(4) *Optional method to report.* A person that makes a payment on behalf of another person but is not required to make an information return under paragraph (e)(1) of this section may elect to do so pursuant to the procedures established by the Commissioner. See, *e.g.*, Rev. Proc. 84–33 (1984–1 C.B. 502) (optional method for a paying agent to report and deposit amounts withheld for payors under the statutory provisions of backup withholding) (see § 601.601(d)(2) of this chapter).

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

Example 1. Bank B provides financing to C, a real estate developer, for a construction project. B makes disbursements from the account for labor, materials, services, and other expenses related to the construction project. In connection with the payments, B performs the following functions: approves payments to the general contractor or subcontractors; ensures that loan proceeds are properly applied and that all approved bills are properly paid to avoid mechanics' or materialmen's liens; conducts site inspections to determine whether work has been completed (but does not check the quality of the work). B is performing management or oversight functions in connection with the payments and is subject to the information reporting requirements of section 6041 with respect to payments.

Example 2. Mortgage company D holds a mortgage on business property owned by E. When the property is damaged by a storm, E's insurance company issues a check payable to both D and E in settlement of E's claim. Pursuant to the contract between D and E, D holds the insurance proceeds in an escrow account and makes disbursements, according to E's instructions, to contractors and subcontractors performing repairs on the property. D is not performing management or

oversight functions, but D has a significant economic interest in the payments because the purpose of the arrangement is to ensure that property on which D holds a mortgage is repaired or replaced. D is subject to the information reporting requirements of section 6041 with respect to the payments to contractors.

Example 3. Settlement agent F provides real estate closing services to real estate brokers and agents. F deposits money received from the buyer or lender in an escrow account and makes payments from the account to real estate agents or brokers, appraisers, land surveyors, building inspectors, or similar service providers according to the provisions of the real estate contract and written instructions from the lender. F may also make disbursements pursuant to oral instructions of the seller or purchaser at closing. F is not performing management or oversight functions and does not have a significant economic interest in the payments, and is not subject to the information reporting requirements of section 6041. For the rules relating to F's obligation to report the gross proceeds of the sale, see section 6045(e) and § 1.6045–4.

Example 4. Assume the same facts as in *Example 3.* In addition, the seller instructs F to hire a contractor to perform repairs on the property. F selects the contractor, negotiates the cost, monitors the progress of the project, and inspects the work to ensure it complies with the contract. With respect to the payments to the contractor, F is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

Example 5. G is a rental agent who manages certain rental property on behalf of property owner H. G finds tenants, arranges leases, collects rent, responds to tenant inquiries regarding maintenance, and hires and makes payments to repairmen. G subtracts her commission and any maintenance payments from rental payments and remits the remainder to H. With respect to payments to repairmen, G is performing management or oversight functions and is subject to the information reporting requirements of section 6041. With respect to the payment of rent to H, G is subject to the information reporting requirements of section 6041 regardless of whether she performs management or oversight functions or has a significant economic interest in the payment. See § 1.6041–3(d) for rules relating to rental agents. See § 1.6041–1(f) to determine the amount that G should report to H as rent.

Example 6. Literary agent J receives a payment from publisher L of fees earned by J's client, author K. J deposits the payment into a bank account in J's name. From time to time and as directed by K, J makes payments from these funds to attorneys, managers, and other third parties for services rendered to K. After subtracting J's commission, J pays K the net amount. J does not order or direct the provision of services by the third parties to K, and J exercises no discretion in making the payments to the third parties or to K. J is not performing management or oversight functions and does not have a significant economic interest in the payments and is not subject to the information reporting requirements of section 6041 in connection with the payments to K or to the third parties. For the rules relating to L's obligation to report the payment of the fees to K, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to K's obligation to report the payment of the commission to J and the payments to the third parties for services, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example 7. Attorney P deposits into a client trust fund a settlement payment from R, the defendant in a breach of contract action for lost profits in which P represented plaintiff Q. P makes payments from the client trust fund to service providers such as expert witnesses and private investigators for expenses incurred in the litigation. P decides whom to hire, negotiates the amount of payment, and determines that the services have been satisfactorily performed. In the event of a dispute with a service provider, P withholds payment until the dispute is settled. With respect to payments to the service providers, P is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

Example 8. Assume the same facts as in *Example 7.* In addition, assume that after paying the service providers and deducting his legal fee, P pays Q the remaining funds that P had received from the settlement with R. With respect to the payment to Q, P is not performing management or oversight functions, does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to R's obligation to report the payment of the settlement proceeds to P, see section 6045(f) and the regulations thereunder. For the rules relating to R's obligation to report the payment of the settlement proceeds to Q, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to Q's obligation to report the payment of attorney fees to P, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example 9. Medical insurer S operates as the administrator of a health care program under a contract with a state. S makes payments of government funds to health care providers who provide care to eligible patients. S receives and reviews claims submitted by patients or health care providers, determines if the claims meet all the requirements of the program (*e.g.,* that the care is authorized and that the patients are eligible beneficiaries), and determines the amount of payment. S is performing management or oversight functions and is subject to the information reporting requirements of section 6041 with respect to the payments.

Example 10. Race track employee T holds deposits made by horse owner U in a special escrow account in U's name. U enters into a contract with jockey V to ride U's horse in a race at the track. As directed by U, T pays V the fee for riding U's horse from U's escrow account. T is not performing management or oversight functions, does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to U's obligation to report the payment of the fee to V, see paragraph (a)(1)(i) of this section.

Example 11. X is a certified public accountant employed by Firm Y, and is not a partner. Client Z pays X directly for accounting services. X remits the amount received to Y, as required by the terms of his employment. X does not have any reporting obligation with respect to the payment to Y. For the rules relating to Z's obligation to report the payment to Y for services, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example 12. Bank contracts with Title Company with respect to the disbursement of funds on a construction loan. Pursuant to their arrangement, the contractor sends draw requests to Title Company, which inspects the work, verifies the amount requested, and then sends the draw request to Bank with supporting documents. Bank pays Title Company the amount of the draw request, and Title Company insures Bank against any loss if it cannot obtain the necessary lien waivers. Bank has a significant economic interest in the payment as a mortgagee, and Title Company exercises management or oversight over the payment. Since Title Company is closest in the chain to the contractor, Title Company should report the payment, unless the parties agree in writing that Bank will report the payment.

(f) *Amount to be reported when fees, expenses or commissions are deducted*—(1) *In general.* The amount to be reported as paid to a payee is the amount includible in the gross income of the payee (which in many cases will be the gross amount of the payment or payments before fees, commissions, expenses, or other amounts owed by the payee to another person have been deducted), whether the payment is made jointly or separately to the payee and another person. The Commissioner may, by guidance published in the Internal Revenue Bulletin, illustrate the circumstances under which the gross amount or less than the gross amount may be reported.

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

Example 1. Attorney P represents client Q in a breach of contract action for lost profits against defendant R. R settles the case for $100,000 damages and $40,000 for attorney fees. Under applicable law, the full $140,000 is includible in Q's gross taxable income. R issues a check payable to P and Q in the amount of $140,000. R is required to make an information return reporting a payment to Q in the amount of $140,000. For the rules with respect to R's obligation to report the payment to P, see section 6045(f) and the regulations thereunder.

Example 2. Assume the same facts as in *Example 1,* except that R issues a check to Q for $100,000 and a separate check to P for $40,000. R is required to make an information return reporting a payment to Q in the amount of $140,000. For the rules with respect to R's obligation to report the

payment to P, see section 6045(f) and the regulations thereunder.

* * * * *

(j) *Effective date.* The provisions of paragraphs (b), (c), (e), and (f) apply to payments made after December 31, 2002.

Par. 3. Section 1.6041–3 is amended as follows:

1. Revising paragraph (d).

2. Removing paragraph (n) and redesignating paragraphs (o), (p) and (q) as paragraphs (n), (o) and (p), respectively.

The revisions read as follows:

§ 1.6041–3 Payments for which no return of information is required under section 6041.

* * * * *

(d) Payments of rent made to rental agents (but the agent is required to report payments of rent to the landlord in accordance with § 1.6041–1(a)(1)(i)(B) and (2)).

* * * * *

Par. 4. Section 1.6045–1 is amended as follows:

1. Revising paragraph (a) introductory text.

2. Revising paragraphs (c)(3) and (c)(4).

3. In paragraph (g)(3)(iv), first and third sentences, removing the language ''§ 5f.6045–1(c)(3) of this chapter'' and adding ''paragraph (c)(3) of this section'' in its place.

4. In paragraph (g)(4) *Examples 1, 4, 5, 6, 7*(i), *8*(i), and *9*(i), removing the language ''§ 5f.6045–1(c)(3)(ii) of this chapter'' and adding ''paragraph (c)(3)(iii) of this section'' in its place in each place it appears.

The revisions read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section and § 1.6045–2:

* * * * *

(c) * * *

(3) *Exceptions*—(i) *Sales effected for exempt recipients*—

(A) *In general.* No return of information is required with respect to a sale effected for a customer that is an exempt recipient under paragraph (c)(3)(i)(B) of this section.

(B) *Exempt recipient defined.* The term *exempt recipient* means—

(*1*) A corporation as defined in section 7701(a)(3), whether domestic or foreign;

(*2*) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(*3*) The United States or a State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, a wholly owned agency or instrumentality of any one or more of the foregoing, or a pool or partnership composed exclusively of any of the foregoing;

(*4*) A foreign government, a political subdivision thereof, an international organization, or any wholly owned agency or instrumentality of the foregoing;

(*5*) A foreign central bank of issue as defined in § 1.895–1(b)(1) (i.e., a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency);

(*6*) A dealer in securities or commodities registered as such under the laws of the United States or a State;

(*7*) A futures commission merchant registered as such with the Commodity Futures Trading Commission;

(*8*) A real estate investment trust (as defined in section 856);

(*9*) An entity registered at all times during the taxable year under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*);

(*10*) A common trust fund (as defined in section 584(a)); or

(*11*) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(C) *Exemption certificate.* A broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in § 31.3406(h)–3) of this chapter, on the broker's actual knowledge that the payee is a person described in paragraph (c)(3)(i)(B), or on the applicable indicators described in § 1.6049–4(c)(1)(ii)(A) through (M). A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is so designated by the Internal Revenue Service in a revenue ruling or revenue procedure (*see* § 601.601(d)(2) of this chapter).

(iii) *Multiple brokers.* If a broker is instructed to initiate a sale by a person that is an exempt recipient described in paragraph (c)(3)(i)(B)(*6*), (*7*), or (*11*) of this section, no return of information is required with respect to the sale by that broker. In a redemption of stock or retirement of securities, only the broker responsible for paying the holder redeemed or retired, or crediting the gross proceeds on the sale to that holder's account, is required to report the sale.

(iv) *Cash on delivery transactions.* In the case of a sale of securities through a cash on delivery account, a delivery versus payment account, or other similar account or transaction, only the broker that receives the gross proceeds from the sale against delivery of the securities sold is required to report the sale. If, however, the broker's customer is another broker (second-party broker) that is an exempt recipient, then only the second-party broker is required to report the sale.

(v) *Fiduciaries and partnerships.* No return of information is required with respect to a sale effected by a custodian or trustee in its capacity as such or a redemption of a partnership interest by a partnership, provided the sale is otherwise reported by the custodian or trustee on a properly filed Form 1041, or the redemption is otherwise reported by the partnership on a properly filed Form 1065, and all Schedule K–1 reporting requirements are satisfied.

(vi) *Sales at issue price.* No return of information is required with respect to a sale of an interest in a regulated investment company that can hold itself out as a money market fund under Rule 2a–7 under the Investment Company Act of 1940 that computes its current price per share for purposes of distributions, redemptions, and purchases so as to stabilize the price per share at a constant amount that approximates its issue price or the price at which it was originally sold to the public.

(vii) *Obligor payments on certain obligations.* No return of information is required with respect to payments representing obligor payments on—

(A) Nontransferable obligations (including savings bonds, savings accounts, checking accounts, and NOW accounts);

(B) Obligations as to which the entire gross proceeds are reported by the broker on Form 1099 under provisions of the Internal Revenue Code other than section 6045 (including stripped coupons issued prior to July 1, 1982); or

(C) Retirement of short-term obligations (i.e., obligations with a fixed maturity date not exceeding 1 year from the date of issue) that have original issue discount, as defined in section 1273(a)(1), with or without application of the de minimis rule.

(D) Demand obligations that also are callable by the obligor and that have no premium or discount.

(viii) *Foreign currency.* No return of information is required with respect to a sale of foreign currency other than a sale pursuant to a forward contract or regulated futures contract that requires delivery of foreign currency.

(ix) *Fractional share.* No return of information is required with respect to a sale of a fractional share of stock if the gross proceeds on the sale of the fractional share are less than $20.

(x) *Certain retirements.* No return of information is required from an issuer or its agent with respect to the retirement of book entry or registered form obligations as to which the relevant books and records indicate that no interim transfers have occurred.

(xi) *Cross reference.* For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, see paragraph (c)(7) of this section.

(xii) *Effective date.* The provisions of this paragraph (c)(3) apply for sales effected after December 31, 2002.

(4) *Examples.* The following examples illustrate the application of the rules in paragraph (c)(3) of this section:

Example 1. P, an individual who is not an exempt recipient, places an order with B, a person generally known in the investment community to be a federally registered broker/dealer, to effect a sale of P's stock in a publicly traded corporation. B, in turn, places an order to sell the stock with C, a second broker, who will execute the sale. B discloses to C the identity of the customer placing the order. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(*6*) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

Example 2. Assume the same facts as in *Example 1* except that B has an omnibus account with C so that B does not disclose to C whether the transaction is for a customer of B or for B's own account. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(*6*) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

Example 3. D, an individual who is not an exempt recipient, enters into a cash on delivery stock transaction by instructing K, a federally registered broker/dealer, to sell stock owned by D, and to deliver the proceeds to L, a custodian bank. Concurrently with the above instructions, D instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to this transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

Example 4. Assume the same facts as in *Example 3* except that E, a federally registered investment advisor, instructs K to sell stock owned by D and to deliver the proceeds to L. Concurrently with the above instructions, E instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to the transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

Example 5. Assume the same facts as in *Example 4* except that the records of both K and L with respect to the transaction show an account in the name of E. Pursuant to paragraph (h)(1) of this section, E is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because E is L's customer and is not an exempt recipient. E is required to make a return of information with respect to the sale because D is E's customer and is not an exempt recipient.

Example 6. F, an individual who is not an exempt recipient, owns bonds that are held by G, a federally registered broker/dealer, in an account for F with G designated as nominee for F. Upon the retirement of the bonds, the gross proceeds are automatically credited to the account of F. G is required to make a return of information with respect to the retirement because G is the broker responsible for making payments of the gross proceeds to F.

* * * * *

§ 1.6045–2 [Amended]

Par. 5. In § 1.6045–2, paragraph (b)(2)(ii), is amended by removing the language ''§ 5f.6045–1(c)(3)(i)(B) of the Temporary Income Tax Regulations under the Tax Equity and Fiscal Responsibility Act of 1982'' and adding the language ''§ 1.6045–1(c)(3)(i)(B)'' in its place.

Par. 6. In § 1.6049–4, paragraph (a)(2) is revised to read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

(a) * * *

(2) *Payor.* For payments made after December 31, 2002, a payor is a person described in paragraph (a)(2)(i) or (ii) of this section.

(i) Every person who makes a payment of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter) to any other person during a calendar year.

(ii) Every person who collects on behalf of another person payments of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter), or who otherwise acts as a middleman (as defined in paragraph (f)(4) of this section) with respect to such payment.

* * * * *

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 7. The authority citation for part 5f is amended by removing the authority citation for ''Sec. 5f.6045–1'' to read in part as follows:

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

§ 5f.6045–1 [Removed]

Par. 8. Section 5f.6045–1 is removed.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 9. The authority citation for part 31 continues to read in part as follows:

Authority:

Par. 10. Section 31.3406–0 is amended by:

1. Revising the entry in the table for § 31.3406(a)–2, paragraph (b).

2. Adding an entry to the table for § 31.3406(a)–2, paragraph (d).

The revision and addition read as follows:

§ 31.3406–0 Outline of the backup withholding regulations.

* * * * *

§ 31.3406(a)–2 Definition of payors obligated to backup withhold.

* * * * *

(b) Persons treated as payors.

* * * * *

(d) Effective date.

* * * * *

Par. 11. Section 31.3406(a)–2 is revised to read as follows:

§ 31.3406(a)–2 Definition of payors obligated to backup withhold.

(a) *In general. Payor* means the person that is required to make an information return under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N, with respect to any reportable payment (as described in section 3406(b)), or that is described in paragraph (b) of this section.

(b) *Persons treated as payors.* The following persons are treated as payors for purposes of section 3406—

(1) A grantor trust established after December 31, 1995, all of which is owned by two or more grantors (treating for this purpose spouses filing a joint return as one grantor);

(2) A grantor trust with ten or more grantors established on or after January 1, 1984 but before January 1, 1996;

(3) A common trust fund; and

(4) A partnership or an S corporation that makes a reportable payment.

(c) *Persons not treated as payors.* A person on the following list is not treated as a payor for purposes of section 3406 if the person does not have a reporting obligation under the section on information reporting to which the payment relates—

(1) A trust (other than a grantor trust as described in paragraph (b)(1) or (2) of this section) that files a Form 1041 containing information required to be shown on an information return, including amounts withheld under section 3406; or

(2) A partnership making a payment of a distributive share or an S corporation making a similar distribution.

(d) *Effective date.* The provisions of this section apply to payments made after December 31, 2002.

§ 31.3406(a)–4 [Amended]

Par. 12. Section 31.3406(a)–4 is amended as follows:

1. In paragraph (c)(1), first sentence, removing the language ''Any middleman (as defined in § 31.3406(a)–2(b))'' and adding ''A person that is a middleman and is a person defined in § 31.3406(a)–2(b) or in the section on information reporting to which the payment relates'' in its place.

2. In paragraph (c)(3), first sentence, removing the language ''§ 31.3406(a)–2(b)(4)'' and adding ''§ 31.3406(a)–2(b)(1) or (2)'' in its place.

§ 31.3406(b)(3)–2 [Amended]

Par. 13. In § 31.3406(b)(3)–2, paragraph (b)(5) is amended by removing the language ''§ 5f.6045–1(c)(3)(ix)'' and adding ''§ 1.6045–1(c)(3)(x)'' in its place.

§ 31.3406(d)–4 [Amended]

Par. 14. In § 31.3406(d)–4, paragraph (a)(1) introductory text is amended by removing the language ''the payor of the instrument (as defined in § 31.3406(a)–2(b)(3)),'' and adding ''a broker holding a security (including stock) for a customer in street name,'' in its place.

§ 31.3406(h)–1 [Amended]

Par. 15. In § 31.3406(h)–1, paragraph (c), second sentence, is amended by removing the language ''§ 5f.6045–1(c)(3)(ii) and (iii)'' and adding ''§ 1.6045–1(c)(3)(iii) and (iv)'' in its place.

§ 31.3406(h)–2 [Amended]

Par. 16. Section 31.3406(h)–2 is amended as follows:

1. In paragraph (c), third sentence, removing the language ''with two or more grantors described in § 31.3406(a)–2(b)(4), which is treated as a middleman payor'' and adding ''described in § 31.3406(a)–2(b)(1) or (2), which is treated as a payor'' in its place.

2. In paragraph (d), first sentence, removing the language ''A middleman payor (as defined in § 31.3406(a)–2(b))'' and adding ''A middleman payor (as defined in § 31.3406(a)–2(b) or in the section on information reporting to which the payment relates)'' in its place.

3. In paragraph (f)(6), removing the language ''§ 31.3406(a)–2(a)'' and adding ''§ 31.3406(a)–2'' in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 17. The authority citation for part 602 continues to read in part as follows:

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

Par. 18. In section 602.101, paragraph (b) is amended by adding the following OMB control numbers in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6041–1	1545–1705
* * * * *	
1.6045–1	1545–1705
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 17, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–18793 Filed 7–25–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[TD 9011]

RIN 1545–AY05

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations governing practice before the Internal Revenue Service (Circular 230). These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations modify the general standards of practice before the Internal Revenue Service.

DATES: *Effective Date:* These regulations are effective July 26, 2002.

Applicability Date: For dates of applicability, *see* § 10.91.

FOR FURTHER INFORMATION CONTACT: Brinton Warren at (202) 622–4940.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1726. The collection of information in these final regulations is in §§ 10.6, 10.29, and 10.30.

Section 10.6 requires an enrolled agent to maintain records and educational materials regarding his or her satisfaction of the qualifying continuing professional education credit. Section 10.6 also requires sponsors of qualifying continuing professional education programs to maintain records and educational material concerning these programs and those who attended them. The collection of this material helps to ensure that individuals enrolled to practice before the Internal Revenue

Service are informed of the newest developments in Federal tax practice.

Section 10.29 requires a practitioner to obtain and retain for a reasonable period written consents to representation whenever such representation conflicts with the interests of the practitioner or the interests of another client of the practitioner. The consents are to be obtained after full disclosure of the conflict is provided to each party. Section 10.30 requires a practitioner to retain for a reasonable period any communication and the list of persons to whom that communication was provided with respect to public dissemination of fee information. The collection of consents to representation and communications concerning practitioner fees protects the practitioner against claims of impropriety and ensures the integrity of the tax administration system.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might 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.

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. The Secretary of the Treasury is authorized, after notice and an opportunity for a proceeding, to suspend or disbar from practice before the Department those representatives who are, inter alia, incompetent, disreputable, or who violate regulations prescribed under section 330 of title 31. Pursuant to section 330 of title 31, the Secretary has published the regulations in Circular 230 (31 CFR part 10). These regulations authorize the Director of Practice to act upon applications for enrollment to practice before the Internal Revenue Service, to make inquiries with respect to matters under the Director of Practice's jurisdiction, to institute proceedings for suspension or disbarment from practice before the Internal Revenue Service, and to perform such other duties as are necessary to carry out these functions.

The regulations have been amended from time to time to address various specific issues in need of resolution. For example, on February 23, 1984, the regulations were amended to provide standards for providing opinions used in tax shelter offerings (49 FR 6719). On October 17, 1985, the regulations were amended to conform to legislative changes requiring the disqualification of an appraiser who is assessed a penalty under section 6701 of the Internal Revenue Code for aiding and abetting the understatement of a tax liability (50 FR 42014). The regulations were most recently amended on June 20, 1994 (59 FR 31523), to provide standards for tax return preparation, to limit the use of contingent fees in tax return or refund claim preparation, to provide expedited rules for suspension, and to clarify or amend certain other items.

On June 15, 1999, an advance notice of proposed rulemaking was published (64 FR 31994) requesting comments on amendments to the regulations that would take into account legal developments, professional integrity and fairness to practitioners, taxpayer service, and sound tax administration. On May 5, 2000, an advance notice of proposed rulemaking was published (65 FR 30375) requesting comments on amendments to the regulations relating to standards of practice governing tax shelters and other general matters. On January 12, 2001, a notice of proposed rulemaking (REG–111835–99) was published (66 FR 3276) that proposed amendments to the regulations, requested comments on the proposed amendments, and announced a public hearing on the subject of the proposed amendments. The January 12, 2001 notice of proposed rulemaking addressed both general matters pertaining to practice before the Internal Revenue Service and also matters pertaining specifically to tax shelter opinions. A public hearing was held on these proposals on May 2, 2001. The final regulations in this document encompass only those proposals addressing non-tax shelter related matters pertaining to practice before the Internal Revenue Service. Accordingly, this document does not contain final regulations governing standards for tax shelter opinions. The standards that currently govern tax shelter opinions remain in effect. The Department of Treasury and Internal Revenue Service intend to issue a second notice of proposed rulemaking that re-proposes amendments for such standards. The Department of Treasury and Internal Revenue Service also intend to issue an additional advance notice of proposed rulemaking that will cover additional non-tax shelter matters pertaining to practice before the Internal Revenue Service. Many of the matters covered by the advance notice of proposed rulemaking will be distinct from those that have been the focus of the non-tax shelter revisions of Circular 230 to this point, e.g., matters concerning unenrolled practice and whether the use of contingent fee arrangements should be further restricted.

Summary of Comments

Fifty-one written comments were received concerning revisions to Circular 230. All comments were considered and are available for public inspection upon request. These comments addressed both the tax shelter and non-tax shelter related proposed amendments. Many commentators expressed general support for amending Circular 230. The following paragraphs provide a summary of significant comments concerning the non-tax shelter proposals.

One commentator recommended specific language for proposed § 10.6 with respect to determining credits for continuing professional education through distance learning programs, and another recommended that the standards for continuing professional education classes be modified to include more diverse subjects beyond those strictly related to taxation, such as in the fields of financial services and practice management.

With regard to unenrolled practice under proposed § 10.7(c)(1)(viii), one commentator argued that a restriction on the right of non-practitioners to practice hampers the ability of taxpayers to obtain a speedy and inexpensive resolution of matters before the Internal Revenue Service. In contrast, some commentators recommended that unenrolled practice as permitted by § 10.7(c)(1)(viii) be further restricted or eliminated outright. One of these commentators suggested that it is not appropriate to allow a tax return preparer who may not have demonstrated knowledge of tax law or tax procedure to represent a taxpayer during an examination merely because the preparer has signed the return under examination.

A number of commentators expressed concern regarding the information to be furnished to the Internal Revenue Service under proposed § 10.20. Commentators were concerned that the proposal is overly burdensome, puts an improper affirmative obligation on a practitioner, fails to respect privileged communications, and impairs a represented taxpayer's right to challenge an unlawful request for information by the Internal Revenue Service. Particular concern was expressed as to the removal

of the phrase ''of doubtful legality,'' appearing in the current section governing the topic.

Commentators both supported and criticized the proposed amendment to § 10.21 regarding a practitioner's duties when discovering a client's error or omission on a return, claim for refund, or other document. Two commentators suggested that the proposal to mandate that a practitioner advise a client regarding the consequences of not taking corrective action was a good one, but should be expanded to include advice regarding the consequences of taking corrective action. Some commentators criticized the proposal on the ground that it would require some practitioners to offer advice beyond their competence.

Commentators suggested that the Internal Revenue Service's interpretation of § 10.26 is too strict and thus imposes obligations on the firms of former government employees that are more burdensome than the related criminal statute.

With regard to the proposed clarification of the prohibition on contingent fees in § 10.27, one commentator was supportive of the clarification, but recommended further amendments to address ambiguities, uncertainties, and opportunities for abuse with regard to the section's application. Another commentator urged that the section be amended so that contingent fees can be charged for advice regarding return positions on original returns when the practitioner reasonably anticipates that the return position will be substantively reviewed by the Internal Revenue Service prior to the filing of the return.

A number of commentators expressed concern regarding the proposed amendment in § 10.28 that would require a practitioner to return a client's records upon a client's request regardless of a dispute over fees. One commentator recommended that the section distinguish between records pertaining to tax and non-tax matters because Circular 230 should not attempt to regulate a practitioner's conduct with respect to non-tax matters. A number of commentators urged that the section be revised to distinguish more completely the records of the client from the practitioner's work product, so that a client may not take advantage of a practitioner by obtaining the practitioner's work product without paying for it. A number of commentators objected to the section on the grounds that it conflicts with state laws governing attorneys' liens.

With regard to the proposal regarding representation of conflicting interests in § 10.29, many commentators expressed concern with the use of the word ''potential'' to modify ''conflicting interests,'' arguing that the use of the word made the section's application too ambiguous. A number of commentators objected to the proposal that consents from taxpayers be in writing, some arguing that the requirement could create disharmony among clients. Some commentators observed that the section incongruously failed to require written consents when the conflict arises with the practitioner's own interest.

Some commentators objected to the proposal in § 10.30 to prohibit enrolled agents from using the term licensed in describing their professional designation. These commentators argued that the term ''licensed'' is not misleading to the public and does accurately describe the professional status of enrolled agents.

With regard to the proposal to add censure as a sanction available under Circular 230, as proposed in § 10.50, some commentators questioned the statutory authority for the censure sanction. One commentator expressed concern that the censure sanction as proposed did not fulfill the role of an intermediate sanction because the remedial conditions proposed for censured practitioners appear to be of indefinite duration.

With regard to proposed § 10.53, governing the receipt of information by the Director of Practice concerning practitioners, some commentators recommended that the section provide for the destruction of information determined to be frivolous and also establish a timetable for the Director of Practice's destruction of records in general.

With regard to the proposed amendments in Subpart D, governing the conduct of disciplinary proceedings under Circular 230, one commentator praised the proposal to merge the provisions governing proceedings for appraisers into the same subpart. One commentator urged that the standard of proof in a Circular 230 hearing be specified, and that such standard should be one of clear and convincing evidence. This commentator also recommended that Subpart D be amended to provide for additional discovery procedures.

Explanation of Provisions

The final regulations adopted in this document concern only the non-tax shelter related provisions as proposed in the January 12, 2001, notice of proposed rulemaking. The Department of Treasury and Internal Revenue Service intend to issue a second notice of proposed rulemaking that re-proposes amendments for the standards governing tax shelter opinions.

Who May Practice

Paragraph (d)(2) of § 10.3 of the regulations adopts the proposed changes that expanded the list of issues with respect to which an enrolled actuary is authorized to represent a taxpayer in limited practice before the Internal Revenue Service. The list is expanded to include issues involving 26 U.S.C. 419 (treatment of funded welfare benefits), 419A (qualified asset accounts), 420 (transfers of excess pension assets to retiree health accounts), 4972 (tax on nondeductible contributions to qualified employer plans), 4976 (taxes with respect to funded welfare benefit plans), and 4980 (tax on reversion of qualified plan assets to employer).

Enrollment

Section § 10.6 sets forth the conditions and process for renewal of enrollment to practice before the Internal Revenue Service. One condition for renewal of enrollment is that the enrolled agent complete a minimum number of hours of continuing professional education in programs comprised of current subject matter in Federal taxation or Federal tax related matters. The final regulations do not adopt the commentator's suggestion to expand the subjects of qualifying tax programs to non-tax related matters, nor do they adopt the suggested language for determining distance learning credits.

Section § 10.6 as adopted differs from the proposed section in that it incorporates a system of rolling renewals for enrollment. The year in which enrolled agents will be required to apply for renewal of enrollment will vary based on the last digit of the enrolled agent's social security number. This change is ministerial only and is made in order to balance the workflow involved in processing renewals.

The final regulations adopt new paragraph 10.6(a) that clarifies that enrollment and the renewal of enrollment of actuaries is also governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 *et seq.*

Unenrolled Practice

The final regulations adopt the provisions governing unenrolled practice as proposed in paragraph 10.7(c)(viii). This amendment preserves the scope of unenrolled practice as it has existed and only makes non-substantive changes in nomenclature that are necessitated by the

organizational restructuring of the Internal Revenue Service.

Information To Be Furnished

Section 10.20 of the regulations adopts the proposed changes in modified form. Paragraph (a) of § 10.20 requires a practitioner to respond promptly to a proper and lawful request for records and information, unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged. The right and ability of practitioners to resist efforts that the practitioner believes to be of doubtful legality is preserved. The phrase ''of doubtful legality'' was excised from § 10.20 merely to eliminate the redundancy in the section's text, which requires requests from the Internal Revenue Service to be ''proper and lawful,'' not to effectuate a substantive change with regard to a practitioner's ability to resist efforts by the government to obtain documents or information that are irrelevant to an inquiry, confidential, privileged, or otherwise immune from compulsion.

The final regulations adopt, with amendment and clarification, the proposed amendment to require a practitioner to provide information regarding the identity of persons the practitioner reasonably believes may have possession or control of requested documents. The requirement, in paragraph (a)(2) of § 10.20, applies only when requested records or information are not in the possession or control of the practitioner or the practitioner's client. The paragraph is modified from its proposed form to clarify that the practitioner's duty is limited only to making reasonable inquiry of the practitioner's client and that there exists no obligation on the practitioner to make inquiry of any other person or to independently verify information provided by a client.

The right and ability of a practitioner to resist a request by the Director of Practice regarding an alleged violation of Circular 230 that the practitioner believes to be of doubtful legality is similarly unchanged in paragraph (b), which requires practitioners to provide information to the Director of Practice regarding the alleged violations of Circular 230 by any person. An alleged violation under paragraph (b) is not limited to a violation that is the subject of a proceeding under subpart D, for the necessary reason that the Director of Practice should be able to obtain evidence regarding alleged violations to determine whether they merit formal charges.

Knowledge of Client's Omission

Section 10.21 of Circular 230 has historically required a practitioner to advise a client promptly of any noncompliance, error, or omission. The proposed rules expanded the practitioner's duty under § 10.21 to include providing advice to the client regarding the manner in which the error or omission might be corrected and the possible consequences of a failure to take such corrective action. Rather than adopting § 10.21 as proposed, the final regulations modify the preexisting duty by simply requiring that, in addition to notifying the client of the fact of the noncompliance, error, or omission, the practitioner advise the client of the consequences as provided under the Code and regulations of the noncompliance, error, or omission. This change requires practitioners to provide information that taxpayers who consult tax professionals typically expect to receive.

Diligence as to Accuracy

The final regulations adopt the proposed clarification in § 10.22 that a practitioner is presumed to have exercised due diligence if the practitioner relies on the work product of another person and the practitioner uses reasonable care in engaging, supervising, training, and evaluating such person, taking proper account of the relationship between the practitioner and the person. It is expected that practitioners will use common sense and experience in guiding their conduct under this section. The section applies both in the context of a firm and in circumstances involving a practitioner's engagement of an outside practitioner. For example, in circumstances in which a practitioner must hire another practitioner for a specialized or complicated matter, such practitioner's duty under the section will be more focused on the reasonable care taken in the engagement of the specialist. Supervising and training are not part of a practitioner's engagement of a specialist. Conversely, in the context of a firm, the section's application will focus more on supervising and training, if there is an issue with regard to a supervisory practitioner's reliance on a subordinate. Finally, the presumption of due diligence provided by this section does not apply for purposes of § 10.33 and § 10.34, governing tax shelter opinions and standards for advising with respect to tax return positions, respectively, which have their own rules concerning due diligence.

Practice by Former Government Employees, Their Partners and Their Associates

The final regulations adopt without change the proposed amendments found in § 10.25 (former § 10.26) governing the restrictions on the practice of former Government employees, their partners, and their associates with respect to matters that the former Government employees participated in during the course of their Government employment. This section reflects changes to the Federal statutes governing post-employment restrictions applicable to former Government employees. The former § 10.25, governing the practice of partners of former Government employees, is removed, as was proposed, because the statutory prohibition implemented by the provision was repealed.

Contingent Fees

The final regulations adopt the proposed clarification governing the prohibition on contingent fees in connection with advice rendered in connection with a position taken or to be taken on an original tax return. The Department of the Treasury and the Internal Revenue Service remain concerned regarding the use of contingent fees and will request further public comments regarding contingent fees in the upcoming advance notice of proposed rulemaking.

Return of Client's Records

The final regulations adopt, with substantial changes, the proposed amendment to § 10.28 that requires a practitioner to return a client's records upon the client's request, regardless of a fee dispute. As recommended by one commentator, the section's application is restricted by paragraph (a) to the client's records that are necessary for the client to comply with his or her Federal tax obligations.

Further, as recommended by a number of commentators, the term *records of the client* is defined to exclude items such as returns or other documents prepared by the practitioner that the practitioner is withholding pending the client's payment of fees for those documents. These changes are incorporated to protect practitioners from being disadvantaged or compromised by clients seeking to obtain an unfair advantage under this section. In consideration of various state laws that may permit liens on a client's records in favor of practitioners during the course of fee disputes, the regulations provide that a practitioner must only return those records that

must be attached to the client's return if a fee dispute has triggered an applicable state lien provision. The practitioner, however, must provide the client access to review and copy any of the client's records retained by the practitioner under state law that are necessary for the client to comply with his Federal tax obligations.

Conflicting Interests

The final regulations adopt the amendments as proposed in § 10.29, with modification. The modifier *potential* has been removed in the identification of conflicts of interest. The final regulations have been modified from the proposed regulations to conform more closely with the approach of the recently revised Model Rule 1.7 of the American Bar Association Rules of Professional Conduct. Section 10.29 requires a client to give informed consent, confirmed in writing, to representation by a practitioner when the representation of one client will be directly adverse to another client or there is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner. The adoption of this requirement results in parallel application to conflicts with another client and conflicts with the practitioner's own interest. The section requires a practitioner to retain the written consent for at least 36 months after the conclusion of the representation and to provide the written consents to the Internal Revenue Service, if requested to do so.

Solicitation

The final regulations adopt some but not all of the changes to the solicitation standards from the proposed regulations. Under the final regulations, a practitioner is prohibited from making written and oral solicitations of employment in matters related to the Internal Revenue Service if such solicitations would violate Federal or State statutes or other rules applicable to the practitioner regarding the uninvited solicitation of prospective clients. For example, if an attorney is prohibited under that attorney's governing State bar rules from making a certain type of uninvited solicitation, the attorney's uninvited solicitation with respect to a matter related to the Internal Revenue Service will constitute a violation of § 10.30. Conversely, if such a solicitation is permissible under the relevant State bar rule, the making of the solicitation with respect to a matter related to the Internal Revenue Service is permissible under § 10.30.

Section 10.30 also expands the prohibition of deceptive and other improper solicitation practices to cover private, as well as public, solicitations. The final regulations provide that a practitioner may not, in matters related to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients, or otherwise practices in a manner forbidden under this section.

In consideration of the comments received, the final regulations do not adopt the change that would have prohibited enrolled agents from using the term *licensed* in describing their professional designation. The Department of Treasury and the Internal Revenue Service recognize the valuable services provided by the over thirty-thousand enrolled agents in the United States, but want to ensure that the respective roles of enrolled agents, attorneys and certified public accountants are understood by taxpayers. The Treasury Department and Internal Revenue Service will solicit comments in an advance notice of proposed rulemaking regarding whether an additional designation may be employed to describe the professional services of enrolled agents.

Sanctions

The final regulations adopt the additional sanction of censure, which is defined as a public reprimand, as proposed in the amendments to § 10.50. The sanction of censure is not listed with disbarment or suspension in 31 U.S.C. 330(b), but the authority of the Secretary to regulate practice before the Internal Revenue Service is not limited to those specific sanctions. A censure sanction is authorized by the general grant of authority to ''regulate the practice of representatives of persons before the Department of the Treasury'' as provided in 31 U.S.C. 330(a). Additionally, the final regulations are modified in § 10.79 to clarify that suspended representatives may be subject to conditions and the conditions placed upon suspended or censured practitioners may only be imposed for a period that is reasonable in light of the gravity of a practitioner's violations.

Disreputable Conduct

Section 10.51 defines disreputable conduct for which a practitioner may be censured, suspended, or disbarred. Such disreputable conduct includes the filing of a complaint against Internal Revenue Service personnel under section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998, if the practitioner knows the complaint is false. Similarly, disreputable conduct also includes knowingly advancing frivolous arguments in collection due process hearings, or in connection with offers in compromise, installment agreements, or the appeals process. Additionally, the definition of disreputable conduct is amended, as proposed, to include conviction of any felony involving conduct that renders the practitioner unfit to practice before the Internal Revenue Service.

Receipt of Information Concerning Practitioner

The final regulations incorporate provisions for the destruction of documents by the Director of Practice. Section 10.53 of the final regulations requires the Director of Practice to destroy reports as soon as permissible under the applicable record control schedules approved by the National Archives and Records Administration and designated in the Internal Revenue Manual.

Evidence that alleges practitioner misconduct, but which is on its face without merit, should not be maintained in a manner that falsely conveys a willingness of the Director of Practice to use such evidence at an indefinite time in the future. This same principle applies to evidence that merits investigation, but is eventually determined to be insufficient to justify the initiation of disciplinary proceedings. If the currently applicable records control schedule proves to be unsuitable in assuring fairness to practitioners, or if it proves to be unworkable given the demands placed upon the Director of Practice, the Internal Revenue Service will initiate the public process required to request a change of the records control schedule through the National Archives and Records Administration.

Consolidation of Appraiser Disqualification Rules

The final regulations adopt without change the consolidation of the virtually identical rules applicable to disciplinary proceedings against practitioners and appraisers that heretofore have been separately set out in separate subparts. The final regulations consolidate the rules regarding sanctions of practitioners and appraisers under subpart D.

Various Aspects of Disciplinary Proceedings

The final regulations adopt the proposed rules of subpart D regarding the conduct of disciplinary proceedings

largely without change. In response to the request of a commentator, § 10.76 has been modified to specifically provide that the standard of proof in Circular 230 proceedings is that of a preponderance of the evidence, if the sanction sought by the Director of Practice is censure or a suspension of less than six month's duration. If the Director of Practice seeks a sanction of disbarment or a suspension of six months or longer or the disqualification of an appraiser, the standard of proof is clear and convincing evidence. The Treasury Department and Internal Revenue Service conclude that the preponderance of evidence standard is justified in the case of the less severe sanctions of censure and suspension of a short duration. When the Director of Practice seeks a more significant sanction, the clear and convincing evidence standard is adopted to protect the interests of the practitioner.

Effective Date

These regulations are effective on July 26, 2002.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities because the general requirements, including the collection of information requirements, of these regulations are substantially the same as the requirements of the regulations that these regulations replace. Persons authorized to practice have long been required to comply with certain standards of conduct when practicing before the Internal Revenue Service. These regulations do not alter the basic nature of the obligations and responsibilities of these practitioners. These regulations clarify those obligations in response to public comments and judicial decisions, and make other modifications to reflect the development of electronic media. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking 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 authors of these regulations are Richard S. Goldstein and Brinton T. Warren, of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Lawyers, Reporting and recordkeeping requirements, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 31 CFR part 10 is amended as follows:

1. The table of contents reads as follows:

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Sec.
10.0 Scope of part.

Subpart A—Rules Governing Authority to Practice

10.1 Director of Practice.
10.2 Definitions.
10.3 Who may practice.
10.4 Eligibility for enrollment.
10.5 Application for enrollment.
10.6 Enrollment.
10.7 Representing oneself; participating in rulemaking; limited practice; special appearances; and return preparation.
10.8 Customhouse brokers.

Subpart B—Duties and Restrictions Relating to Practice Before the Internal Revenue Service

10.20 Information to be furnished.
10.21 Knowledge of client's omission.
10.22 Diligence as to accuracy.
10.23 Prompt disposition of pending matters.
10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.
10.25 Practice by former Government employees, their partners and their associates.
10.26 Notaries.
10.27 Fees.
10.28 Return of client's records.
10.29 Conflicting interests.
10.30 Solicitation.
10.31 Negotiation of taxpayer checks.
10.32 Practice of law.
10.33 Tax shelter opinions.
10.34 Standards for advising with respect to tax return positions and for preparing or signing returns.

Subpart C—Sanctions for Violation of the Regulations

10.50 Sanctions.
10.51 Incompetence and disreputable conduct.
10.52 Violation of regulations.
10.53 Receipt of information concerning practitioner.

Subpart D—Rules Applicable to Disciplinary Proceedings

10.60 Institution of proceeding.
10.61 Conferences.
10.62 Contents of complaint.
10.63 Service of complaint; service and filing of other papers.
10.64 Answer; default.
10.65 Supplemental charges.
10.66 Reply to answer.
10.67 Proof; variance; amendment of pleadings.
10.68 Motions and requests.
10.69 Representation; ex parte communication.
10.70 Administrative Law Judge.
10.71 Hearings.
10.72 Evidence.
10.73 Depositions.
10.74 Transcript.
10.75 Proposed findings and conclusions.
10.76 Decision of Administrative Law Judge.
10.77 Appeal of decision of Administrative Law Judge.
10.78 Decision on appeal.
10.79 Effect of disbarment, suspension, or censure.
10.80 Notice of disbarment, suspension, censure, or disqualification.
10.81 Petition for reinstatement.
10.82 Expedited suspension upon criminal conviction or loss of license for cause.

Subpart E—General Provisions

10.90 Records.
10.91 Saving clause.
10.92 Special orders.
10.93 Effective date.

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 et. seq.; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330.

§ 10.0 Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part prescribes the sanctions for violating the regulations; subpart D of this part contains the rules applicable to disciplinary proceedings; and subpart E of this part contains general provisions including provisions relating to the availability of official records.

2. In part 10, subpart A is revised to read as follows:

Subpart A—Rules Governing Authority to Practice

§ 10.1 Director of Practice.

(a) *Establishment of office.* The Office of Director of Practice is established in the Office of the Secretary of the Treasury. The Director of Practice is

appointed by the Secretary of the Treasury, or his or her designate.

(b) *Duties.* The Director of Practice acts on applications for enrollment to practice before the Internal Revenue Service; makes inquiries with respect to matters under his or her jurisdiction; institutes and provides for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers; and performs other duties as are necessary or appropriate to carry out his or her functions under this part or as are prescribed by the Secretary of the Treasury, or his or her delegate.

(c) *Acting Director of Practice.* The Secretary of the Treasury, or his or her delegate, will designate an officer or employee of the Treasury Department to act as Director of Practice in the absence of the Director or a vacancy in that office.

§ 10.2 Definitions.

As used in this part, except where the text clearly provides otherwise:

(a) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(b) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(c) *Commissioner* refers to the Commissioner of Internal Revenue.

(d) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, and representing a client at conferences, hearings, and meetings.

(e) *Practitioner* means any individual described in paragraphs (a), (b), (c), or (d) of § 10.3.

(f) A *tax return* includes an amended tax return and a claim for refund.

(g) *Service* means the Internal Revenue Service.

§ 10.3 Who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the party or parties on whose behalf he or she acts.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as a certified public accountant and is authorized to represent the party or parties on whose behalf he or she acts.

(c) *Enrolled agents.* Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(d) *Enrolled actuaries.* (1) Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration stating that he or she is currently qualified as an enrolled actuary and is authorized to represent the party or parties on whose behalf he or she acts.

(2) Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions in title 26 of the United States Code: sections 401 (relating to qualification of employee plans), 403(a) (relating to whether an annuity plan meets the requirements of section 404(a)(2)), 404 (relating to deductibility of employer contributions), 405 (relating to qualification of bond purchase plans), 412 (relating to funding requirements for certain employee plans), 413 (relating to application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer), 414 (relating to definitions and special rules with respect to the employee plan area), 419 (relating to treatment of funded welfare benefits), 419A (relating to qualified asset accounts), 420 (relating to transfers of excess pension assets to retiree health accounts), 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412), 4972 (relating to tax on nondeductible contributions to qualified employer plans), 4976 (relating to taxes with respect to funded welfare benefit plans), 4980 (relating to tax on reversion of qualified plan assets to employer), 6057 (relating to annual registration of plans), 6058 (relating to information required in connection with certain plans of deferred compensation), 6059 (relating to periodic report of actuary), 6652(e) (relating to the failure to file annual registration and other notifications by pension plan), 6652(f) (relating to the failure to file information required in connection with certain plans of deferred compensation), 6692 (relating to the failure to file actuarial report), 7805(b) (relating to the extent to which an Internal Revenue Service ruling or determination letter coming under the statutory provisions listed here will be applied without retroactive effect); and 29 U.S.C. 1083 (relating to the waiver of funding for nonqualified plans).

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants and enrolled agents.

(e) *Others.* Any individual qualifying under paragraph (d) of § 10.5 or § 10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.

(f) *Government officers and employees, and others.* An individual, who is an officer or employee of the executive, legislative, or judicial branch of the United States Government; an officer or employee of the District of Columbia; a Member of Congress; or a Resident Commissioner may not practice before the Internal Revenue Service if such practice violates 18 U.S.C. 203 or 205.

(g) *State officers and employees.* No officer or employee of any State, or subdivision of any State, whose duties require him or her to pass upon, investigate, or deal with tax matters for such State or subdivision, may practice before the Internal Revenue Service, if such employment may disclose facts or information applicable to Federal tax matters.

§ 10.4 Eligibility for enrollment.

(a) *Enrollment upon examination.* The Director of Practice may grant enrollment to an applicant who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Director of Practice and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment of former Internal Revenue Service employees.* The Director of Practice may grant enrollment to an applicant who, by virtue of his or her past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part, under the following circumstances—

(1) The former employee applies for enrollment to the Director of Practice on a form supplied by the Director of Practice and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) An appropriate office of the Internal Revenue Service, at the request of the Director of Practice, will provide the Director of Practice with a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular class or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant.

(4) Application for enrollment based on an applicant's former employment with the Internal Revenue Service must be made within 3 years from the date of separation from such employment.

(5) An applicant for enrollment who is requesting such enrollment based on his or her former employment with the Internal Revenue Service must have had a minimum of 5 years continuous employment with the Internal Revenue Service during which he or she must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations thereunder relating to income, estate, gift, employment, or excise taxes.

(6) For the purposes of paragraph (b)(5) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least 3 of which occurred within the 5 years preceding the date of application, is the equivalent of 5 years continuous employment.

(c) *Natural persons.* Enrollment to practice may be granted only to natural persons.

§ 10.5 Application for enrollment.

(a) *Form; address.* An applicant for enrollment must file an application on Form 23, ''Application for Enrollment to Practice Before the Internal Revenue Service,'' properly executed under oath or affirmation, with the Director of Practice. The address of the applicant entered on Form 23 will be the address under which a successful applicant is enrolled and is the address to which the Director of Practice will send correspondence concerning enrollment. An enrolled agent must send notification of any change to his or her enrollment address to the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or at such other address specified by the Director of Practice. This notification must include the enrolled agent's name, old address, new address, social security number or tax identification number, signature, and the date.

(b) *Fee.* The application for enrollment must be accompanied by a check or money order in the amount set forth on Form 23, payable to the Internal Revenue Service, which amount constitutes a fee charged to each applicant for enrollment. This fee will be retained by the United States whether or not the applicant is granted enrollment.

(c) *Additional information; examination.* The Director of Practice, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to any written or oral examination under oath or otherwise. The Director of Practice will, on written request filed by an applicant, afford such applicant the opportunity to be heard with respect to his or her application for enrollment.

(d) *Temporary recognition.* On receipt of a properly executed application, the Director of Practice may grant the applicant temporary recognition to practice pending a determination as to whether enrollment to practice should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant enrollment to practice, or if there is any information before the Director of Practice indicating that the statements in the application are untrue or that the applicant would not otherwise qualify for enrollment. Issuance of temporary recognition does not constitute enrollment to practice or a finding of eligibility for enrollment, and the temporary recognition may be withdrawn at any time by the Director of Practice.

(e) *Appeal from denial of application.* The Director of Practice must inform the applicant as to the reason(s) for any denial of an application for enrollment. The applicant may, within 30 days after receipt of the notice of denial of enrollment, file a written appeal of the denial of enrollment with the Secretary of the Treasury or his or her delegate. A decision on the appeal will be rendered by the Secretary of the Treasury, or his or her delegate, as soon as practicable.

§ 10.6 Enrollment.

(a) *Roster.* The Director of Practice will maintain rosters of all individuals—

(1) Who have been granted active enrollment to practice before the Internal Revenue Service;

(2) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(3) Whose enrollment has been placed in inactive retirement status;

(4) Who have been censured, suspended, or disbarred from practice before the Internal Revenue Service;

(5) Whose offer of consent to resign from enrollment to practice before the Internal Revenue Service has been accepted by the Director of Practice under § 10.61; and

(6) Whose application for enrollment has been denied.

(b) *Enrollment card.* The Director of Practice will issue an enrollment card to each individual whose application for enrollment to practice before the Internal Revenue Service is approved after July 26, 2002. Each enrollment card will be valid for the period stated on the enrollment card. An individual is not eligible to practice before the Internal Revenue Service if his or her enrollment card is not valid.

(c) *Term of enrollment.* Each individual enrolled to practice before the Internal Revenue Service will be accorded active enrollment status subject to his or her renewal of enrollment as provided in this part.

(d) *Renewal of enrollment.* To maintain active enrollment to practice before the Internal Revenue Service, each individual enrolled is required to have his or her enrollment renewed. Failure by an individual to receive notification from the Director of Practice

of the renewal requirement will not be justification for the failure to satisfy this requirement.

(1) All individuals licensed to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(2) All individuals licensed to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and January 31, 2005. The renewal will be effective April 1, 2005.

(3) All individuals licensed to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after November 1, 2005, must apply for renewal between November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(4) Thereafter, applications for renewal will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(1), (2) or (3) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(5) The Director of Practice will notify the individual of his or her renewal of enrollment and will issue the individual a card evidencing enrollment.

(6) A reasonable nonrefundable fee may be charged for each application for renewal of enrollment filed with the Director of Practice.

(7) Forms required for renewal may be obtained from the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

(e) *Condition for renewal: Continuing professional education.* In order to qualify for renewal of enrollment, an individual enrolled to practice before the Internal Revenue Service must certify, on the application for renewal form prescribed by the Director of Practice, that he or she has satisfied the following continuing professional education requirements.

(1) *For renewed enrollment effective after March 31, 2004.* (i) A minimum of 16 hours of continuing education credit must be completed during each calendar year in the enrollment term.

(2) *For renewed enrollment effective after April 1, 2007.* (i) A minimum of 72 hours of continuing education credit must be completed during each three year period described in paragraph (d)(4) of this section. Each such three year period is known as an enrollment cycle.

(ii) A minimum of 16 hours of continuing education credit, including 2 hours of ethics or professional conduct, must be completed in each year of an enrollment cycle.

(iii) An individual who receives initial enrollment during an enrollment cycle must complete two (2) hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(f) *Qualifying continuing education*—(1) General. To qualify for continuing education credit, a course of learning must—

(i) Be a qualifying program designed to enhance professional knowledge in Federal taxation or Federal tax related matters, i.e., programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax preparation software and taxation or ethics; and

(ii) Be conducted by a qualifying sponsor.

(2) *Qualifying programs*—(i) *Formal programs.* A formal program qualifies as continuing education programs if it—

(A) Requires attendance. Additionally, the program sponsor must provide each attendee with a certificate of attendance; and

(B) Requires that the program be conducted by a qualified instructor, discussion leader, or speaker, i.e., a person whose background, training, education and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program; and

(C) Provides or requires a written outline, textbook, or suitable electronic educational materials.

(ii) *Correspondence or individual study programs (including taped programs).* Qualifying continuing education programs include correspondence or individual study programs that are conducted by qualifying sponsors and completed on an individual basis by the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs if they—

(A) Require registration of the participants by the sponsor;

(B) Provide a means for measuring completion by the participants (e.g., a written examination), including the issuance of a certificate of completion by the sponsor; and

(C) Provide a written outline, textbook, or suitable electronic educational materials.

(iii) *Serving as an instructor, discussion leader or speaker.* (A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) Two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum credit for instruction and preparation may not exceed 50 percent of the continuing education requirement for an enrollment cycle.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle, will receive continuing education credit for only one such presentation for the enrollment cycle.

(iv) *Credit for published articles, books, etc.* (A) Continuing education credit will be awarded for publications on Federal taxation or Federal tax related matters, including accounting, financial management, tax preparation software, and taxation, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice before the Internal Revenue Service.

(B) The credit allowed will be on the basis of one hour credit for each hour of preparation time for the material. It is the responsibility of the person claiming the credit to maintain records to verify preparation time.

(C) The maximum credit for publications may not exceed 25 percent

of the continuing education requirement of any enrollment cycle.

(3) *Periodic examination.* (i) Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by—

(A) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(B) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(ii) Courses designed to help an applicant prepare for the examination specified in paragraph (a) of § 10.4 are considered basic in nature and are not qualifying continuing education.

(g) *Sponsors.* (1) Sponsors are those responsible for presenting programs.

(2) To qualify as a sponsor, a program presenter must—

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(iii) Be recognized by the Director of Practice as a professional organization or society whose programs include offering continuing professional education opportunities in subject matters within the scope of paragraph (f)(1)(i) of this section; or

(iv) File a sponsor agreement with the Director of Practice and obtain approval of the program as a qualified continuing education program.

(3) A qualifying sponsor must ensure the program complies with the following requirements—

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation of technical content and presentation;

(v) Certificates of completion must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the sponsor to verify the participants who attended and completed the program for a period of three years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(4) Professional organizations or societies wishing to be considered as qualified sponsors must request this status from the Director of Practice and furnish information in support of the request together with any further information deemed necessary by the Director of Practice.

(5) A professional organization or society recognized as a qualified sponsor by the Director of Practice will retain its status for one enrollment cycle. The Director of Practice will publish the names of such sponsors on a periodic basis.

(h) *Measurement of continuing education coursework.* (1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, *i.e.*, 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(i) *Recordkeeping requirements.* (1) Each individual applying for renewal must retain for a period of three years following the date of renewal of enrollment the information required with regard to qualifying continuing professional education credit hours. Such information includes—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;

(iv) Written outlines, course syllibi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the sponsor.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of three years following the date of renewal of enrollment—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;

(iv) The dates of the program; and

(v) The credit hours claimed.

(3) To receive continuing education credit for publications, the following information must be maintained for a period of three years following the date of renewal of enrollment—

(i) The publisher;

(ii) The title of the publication;

(iii) A copy of the publication;

(iv) The date of publication; and

(v) Records that substantiate the hours worked on the publication.

(j) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Director of Practice for the following reasons—

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary by the Director of Practice. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status, so notified by the Director of Practice, and placed on a roster of inactive enrolled individuals.

(5) If a request for waiver is approved, the individual will be notified and issued a card evidencing renewal.

(6) Those who are granted waivers are required to file timely applications for renewal of enrollment.

(k) *Failure to comply.* (1) Compliance by an individual with the requirements of this part is determined by the Director of Practice. An individual who fails to meet the requirements of eligibility for renewal of enrollment will be notified by the Director of Practice at

his or her enrollment address by first class mail. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to furnish information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered by the Director of Practice in making a final determination as to eligibility for renewal of enrollment.

(2) The Director of Practice may require any individual, by notice sent by first class mail to his or her enrollment address, to provide copies of any records required to be maintained under this part. The Director of Practice may disallow any continuing professional education hours claimed if the individual fails to comply with this requirement.

(3) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive enrollment status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are enrolled to practice before the Internal Revenue Service, or use the term *enrolled agent,* the designation ''E. A.,'' or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in an inactive status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence of the completion of all required continuing professional education hours for the enrollment cycle. Continuing education credit under this paragraph (k)(5) may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster.

(6) An individual placed in an inactive status must file an application for renewal of enrollment and satisfy the requirements for renewal as set forth in this section within three years of being placed in an inactive status. The name of such individual otherwise will be removed from the inactive enrollment roster and his or her enrollment will terminate. Eligibility for enrollment must then be reestablished by the individual as provided in this section.

(7) Inactive enrollment status is not available to an individual who is the subject of a disciplinary matter in the Office of Director of Practice.

(l) *Inactive retirement status.* An individual who no longer practices before the Internal Revenue Service may request being placed in an inactive status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. Such individual must file a timely application for renewal of enrollment at each applicable renewal or enrollment period as provided in this section. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional education hours for the enrollment cycle. Inactive retirement status is not available to an individual who is subject of a disciplinary matter in the Office of Director of Practice.

(m) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action is required to be in conformance with the requirements for renewal of enrollment before his or her eligibility is restored.

(n) *Verification.* The Director of Practice may review the continuing education records of an enrolled individual and/or qualified sponsor in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided in paragraph (f) of this section.

(o) *Enrolled actuaries.* The enrollment and the renewal of enrollment of actuaries authorized to practice under paragraph (d) of § 10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.71.

(Approved by the Office of Management and Budget under Control No. 1545–0946 and 1545–1726)

§ 10.7 Representing oneself; participating in rulemaking; limited practice; special appearances; and return preparation.

(a) *Representing oneself.* Individuals may appear on their own behalf before the Internal Revenue Service provided they present satisfactory identification.

(b) *Participating in rulemaking.* Individuals may participate in rulemaking as provided by the Administrative Procedure Act. *See* 5 U.S.C. 553.

(c) *Limited practice*—(1) *In general.* Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c)(1), even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of his or her authority to represent the taxpayer. The circumstances described in this paragraph (c)(1) are as follows:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer.

(iii) A general partner or a regular full-time employee of a partnership may represent the partnership.

(iv) A bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(v) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent any individual or entity, who is outside the United States, before personnel of the Internal Revenue Service when such representation takes place outside the United States.

(viii) An individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or regulations) to sign the tax return, may represent the taxpayer before revenue agents, customer service representatives or similar officers and employees of the Internal Revenue Service during an examination of the taxable year or period covered by that tax return, but, unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Department of Treasury.

(2) *Limitations.* (i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section.

(ii) The Director, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify censuring, suspending, or disbarring a practitioner from practice before the Internal Revenue Service.

(iii) An individual who represents a taxpayer under the authority of paragraph (c)(1) of this section is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters as the Director of Practice prescribes.

(d) *Special appearances.* The Director of Practice may, subject to such conditions as he or she deems appropriate, authorize an individual who is not otherwise eligible to practice before the Internal Revenue Service to represent another person in a particular matter.

(e) *Preparing tax returns and furnishing information.* Any individual may prepare a tax return, appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(f) *Fiduciaries.* For purposes of this part, a fiduciary (i.e., a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

§ 10.8 Customhouse brokers.

Nothing contained in the regulations in this part will affect or limit the right of a customhouse broker, licensed as such by the Commissioner of Customs in accordance with the regulations prescribed therefor, in any customs district in which he or she is so licensed, at a relevant local office of the Internal Revenue Service or before the National Office of the Internal Revenue Service, to act as a representative in respect to any matters relating specifically to the importation or exportation of merchandise under the customs or internal revenue laws, for any person for whom he or she has acted as a customhouse broker.

3. In part 10, subpart B is amended by revising §§ 10.20 through 10.32 and revising § 10.34.

Subpart B—Duties and Restrictions Relating to Practice Before the Internal Revenue Service

§ 10.20 Information to be furnished.

(a) *To the Internal Revenue Service.* (1) A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

(2) Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

(b) *To the Director of Practice.* When a proper and lawful request is made by the Director of Practice, a practitioner must provide the Director of Practice with any information the practitioner has concerning an inquiry by the Director of Practice into an alleged violation of the regulations in this part by any person, and to testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(c) *Interference with a proper and lawful request for records or information.* A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, or the Director of Practice, or his or her employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

§ 10.21 Knowledge of client's omission.

A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

§ 10.22 Diligence as to accuracy.

(a) *In general.* A practitioner must exercise due diligence—

(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

(b) *Reliance on others.* Except as provided in §§ 10.33 and 10.34, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

§ 10.23 Prompt disposition of pending matters.

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

§ 10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.

A practitioner may not, knowingly and directly or indirectly:

(a) Accept assistance from or assist any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.

(b) Accept assistance from any former government employee where the provisions of § 10.25 or any Federal law would be violated.

§ 10.25 Practice by former Government employees, their partners and their associates.

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

(1) *Assist* means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly or indirectly.

(2) *Government employee* is an officer or employee of the United States or any agency of the United States, including a *special government employee* as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) *Member of a firm* is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) *Practitioner* includes any individual described in paragraph (f) of § 10.2.

(5) *Official responsibility* means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action, with or without knowledge of the action.

(6) *Participate or participation* means substantial involvement as a Government employee by making decisions, or preparing or reviewing documents with or without the right to exercise a judgment of approval or disapproval, or participating in conferences or investigations, or rendering advice of a substantial nature.

(7) *Rule* includes Treasury Regulations, whether issued or under preparation for issuance as Notices of Proposed Rule Making or as Treasury Decisions; revenue rulings; and revenue procedures published in the Internal Revenue Bulletin. *Rule* does not include a *transaction* as defined in paragraph (a)(8) of this section.

(8) *Transaction* means any decision, determination, finding, letter ruling, technical advice, Chief Counsel advice, or contract or the approval or disapproval thereof, relating to a particular factual situation or situations involving a specific party or parties whose rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service, or other legal rights, are determined or immediately affected therein and to which the United States is a party or in which it has a direct and substantial interest, whether or not the same taxable periods are involved. *Transaction* does not include *rule* as defined in paragraph (a)(7) of this section.

(b) *General rules.* (1) No former Government employee may, subsequent to his or her Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207 or any other laws of the United States.

(2) No former Government employee who participated in a transaction may, subsequent to his or her Government employment, represent or knowingly assist, in that transaction, any person who is or was a specific party to that transaction.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a transaction may not, within two years after his or her Government employment is ended, represent or knowingly assist in that transaction any person who is or was a specific party to that transaction.

(4) No former Government employee may, within one year after his or her Government employment is ended, appear before any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule in the development of which the former Government employee participated or for which, within a period of one year prior to the termination of his or her Government employment, he or she had official responsibility. This paragraph (b)(4) does not, however, preclude such former employee from appearing on his or her own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a transaction involving the application or interpretation of such a rule with respect to that transaction, provided that such former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) *Firm representation.* (1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any transaction with respect to which the restrictions of paragraph (b)(2) or (3) of this section apply to the former Government employee, in that transaction, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the transaction(s) requiring isolation and it must be filed with the Director of Practice (and at such other place(s) directed by the Director of Practice) and in such other place and in the manner prescribed by rule or regulation.

(d) *Pending representation.* Practice by former Government employees, their partners and associates with respect to representation in pecific matters where actual representation commenced before July 26, 2002 is governed by the regulations set forth at 31 CFR part 10 revised as of July 1, 2002. The burden of showing that representation commenced before July 26, 2002 lies with the former Government employees, and their partners and associates.

§ 10.26 Notaries.

A practitioner may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the Internal Revenue Service and for which he or she is employed as counsel, attorney, or agent, or in which he or she may be in any way interested.

§ 10.27 Fees.

(a) *Generally.* A practitioner may not charge an unconscionable fee for representing a client in a matter before the Internal Revenue Service.

(b) *Contingent fees.* (1) For purposes of this section, a contingent fee is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) A practitioner may not charge a contingent fee for preparing an original tax return or for any advice rendered in connection with a position taken or to be taken on an original tax return.

(3) A contingent fee may be charged for preparation of or advice in connection with an amended tax return or a claim for refund (other than a claim for refund made on an original tax return), but only if the practitioner reasonably anticipates at the time the fee arrangement is entered into that the amended tax return or refund claim will receive substantive review by the Internal Revenue Service.

§ 10.28 Return of client's records.

(a) In general, a practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations. The practitioner may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return. The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations.

(b) For purposes of this section, *Records of the client* include all documents or written or electronic materials provided to the practitioner, or obtained by the practitioner in the course of the practitioner's representation of the client, that preexisted the retention of the practitioner by the client. The term also includes materials that were prepared by the client or a third party (not including an employee or agent of the practitioner) at any time and provided to the practitioner with respect to the subject matter of the representation. The term also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current Federal tax obligations. The term does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner or the practitioner's firm, employees or agents if the practitioner is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

§ 10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client in his or her practice before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if:

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) Each affected client gives informed consent, confirmed in writing.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients and the written consents must be provided to any officer or employee of the Internal Revenue Service on request. y

(Approved by the Office of Management and Budget under Control No. 1545–1726)

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions.* (1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, in describing their professional designation, may not utilize the term of art ''certified'' or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions are ''enrolled to represent taxpayers before the Internal Revenue Service,'' ''enrolled to practice before the Internal Revenue Service,'' and ''admitted to practice before the Internal Revenue Service.''

(2) A practitioner may not make, directly or indirectly, an uninvited written or oral solicitation of employment in matters related to the Internal Revenue Service if the solicitation violates Federal or State law or other applicable rule, e.g., attorneys are precluded from making a solicitation that is prohibited by conduct rules applicable to all attorneys in their State(s) of licensure. Any lawful solicitation made by or on behalf of a practitioner eligible to practice before the Internal Revenue Service must, nevertheless, clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(b) *Fee information.* (1)(i) A practitioner may publish the availability of a written schedule of fees and disseminate the following fee information—

(A) Fixed fees for specific routine services.

(B) Hourly rates.

(C) Range of fees for particular services.

(D) Fee charged for an initial consultation.

(ii) Any statement of fee information concerning matters in which costs may be incurred must include a statement disclosing whether clients will be responsible for such costs.

(2) A practitioner may charge no more than the rate(s) published under paragraph (b)(1) of this section for at least 30 calendar days after the last date on which the schedule of fees was published.

(c) *Communication of fee information.* Fee information may be communicated in professional lists, telephone directories, print media, mailings, electronic mail, facsimile, hand delivered flyers, radio, television, and any other method. The method chosen, however, must not cause the communication to become untruthful, deceptive, or otherwise in violation of this part. A practitioner may not persist in attempting to contact a prospective client if the prospective client has made it known to the practitioner that he or she does not desire to be solicited. In the case of radio and television broadcasting, the broadcast must be recorded and the practitioner must retain a recording of the actual transmission. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. The copy must be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

(d) *Improper associations.* A practitioner may not, in matters related

to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section.

(Approved by the Office of Management and Budget under Control No. 1545–1726)

§ 10.31 Negotiation of taxpayer checks.

A practitioner who prepares tax returns may not endorse or otherwise negotiate any check issued to a client by the government in respect of a Federal tax liability.

§ 10.32 Practice of law.

Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.

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§ 10.34 Standards for advising with respect to tax return positions and for preparing or signing returns.

(a) *Realistic possibility standard.* A practitioner may not sign a tax return as a preparer if the practitioner determines that the tax return contains a position that does not have a realistic possibility of being sustained on its merits (the realistic possibility standard) unless the position is not frivolous and is adequately disclosed to the Internal Revenue Service. A practitioner may not advise a client to take a position on a tax return, or prepare the portion of a tax return on which a position is taken, unless—

(1) The practitioner determines that the position satisfies the realistic possibility standard; or

(2) The position is not frivolous and the practitioner advises the client of any opportunity to avoid the accuracy-related penalty in section 6662 of the Internal Revenue Code by adequately disclosing the position and of the requirements for adequate disclosure.

(b) *Advising clients on potential penalties.* A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, must inform the client of the penalties reasonably likely to apply to the client with respect to the position advised, prepared, or reported. The practitioner also must inform the client of any opportunity to avoid any such penalty by disclosure, if relevant, and of the requirements for adequate disclosure. This paragraph (b) applies even if the practitioner is not subject to a penalty with respect to the position.

(c) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(d) *Definitions.* For purposes of this section—

(1) *Realistic possibility.* A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well informed analysis of the law and the facts by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. The authorities described in 26 CFR 1.6662–4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations may be taken into account for purposes of this analysis. The possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled may not be taken into account.

(2) *Frivolous.* A position is frivolous if it is patently improper.

4. In part 10, subparts C, D, and E are revised to read as follows:

Subpart C—Sanctions for Violation of the Regulations

§ 10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or his or her delegate, after notice and an opportunity for a proceeding, may censure, suspend or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable, fails to comply with any regulation in this part, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

(b) *Authority to disqualify.* The Secretary of the Treasury, or his or her delegate, after due notice and opportunity for hearing, may disqualify any appraiser with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code.

(1) If any appraiser is disqualified pursuant to this subpart C, such appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Director of Practice pursuant to § 10.81, regardless of whether such evidence or testimony would pertain to an appraisal made prior to or after such date.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

§ 10.51 Incompetence and disreputable conduct.

Incompetence and disreputable conduct for which a practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service includes, but is not limited to—

(a) Conviction of any criminal offense under the revenue laws of the United States;

(b) Conviction of any criminal offense involving dishonesty or breach of trust;

(c) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service;

(d) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term *information.*

(e) Solicitation of employment as prohibited under § 10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(f) Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax, or

knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(g) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(h) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor or thing of value.

(i) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, territory, possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(j) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

(k) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations and statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

(l) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (l) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the tax opinion or offering material are false or misleading. For purposes of this paragraph (l), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

§ 10.52 Violation of regulations.

A practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service for any of the following:

(a) Willfully violating any of the regulations contained in this part.

(b) Recklessly or through gross incompetence (within the meaning of § 10.51(l)) violating § 10.33 or 10.34.

§ 10.53 Receipt of information concerning practitioner.

(a) *Officer or employee of the Internal Revenue Service.* If an officer or employee of the Internal Revenue Service has reason to believe that a practitioner has violated any provision of this part, the officer or employee will promptly make a written report to the Director of Practice of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests.

(b) *Other persons.* Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the Director of Practice or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation to the Director of Practice.

(c) *Destruction of report.* No report made under paragraph (a) or (b) of this section shall be maintained by the Director of Practice unless retention of such record is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. The Director of Practice must destroy such reports as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D.* The destruction of any report will not bar any proceeding under subpart D of this part, but precludes the Director of Practice's use of a copy of such report in a proceeding under subpart D of this part.

Subpart D—Rules Applicable to Disciplinary Proceedings

§ 10.60 Institution of proceeding.

(a) Whenever the Director of Practice determines that a practitioner violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of Practice may reprimand the practitioner or, in accordance with § 10.62, institute a proceeding for censure, suspension, or disbarment of the practitioner. A proceeding for censure, suspension, or disbarment of a practitioner is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(b) Whenever the Director of Practice is advised or becomes aware that a penalty has been assessed against an appraiser under section 6701(a) of the Internal Revenue Code, the Director of Practice may reprimand the appraiser or, in accordance with § 10.62, institute a proceeding for disqualification of the appraiser. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(c) Except as provided in § 10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

§ 10.61 Conferences.

(a) *In general.* The Director of Practice may confer with a practitioner or an appraiser concerning allegations of misconduct irrespective of whether a proceeding for censure, suspension, disbarment, or disqualification has been instituted against the practitioner or appraiser. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Resignation or voluntary censure, suspension or disbarment.* In lieu of a proceeding being instituted or continued under paragraph (a) of § 10.60, a practitioner may offer his or her consent to the issuance of a censure, suspension or disbarment, or, if the practitioner is an enrolled agent, may offer to resign. The Director of Practice may, in his or her discretion, accept or decline the offered censure, suspension,

disbarment, or offer of resignation by an enrolled agent, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of censure, suspension, or disbarment, or, if the practitioner is an enrolled agent, offer of resignation, containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension, disbarment, or offer of resignation by an enrolled agent, submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Voluntary disqualification.* In lieu of a proceeding being instituted or continued under paragraph (b) of § 10.60, an appraiser may offer his or her consent to disqualification. The Director of Practice may, in his or her discretion, accept or decline the offered disqualification, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of disqualification containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension or disbarment submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

§ 10.62 Contents of complaint.

(a) *Charges.* A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by the Director of Practice or a person representing the Director of Practice under § 10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that he or she is able to prepare a defense. In the case of a complaint filed against an appraiser, the complaint is sufficient if it refers to a penalty imposed previously on the respondent under section 6701(a) of the Internal Revenue Code.

(b) *Specification of sanction.* The complaint must specify the sanction sought by the Director of Practice against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer.* The Director of Practice must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, the time for which may not be less than15 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of Practice to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

§ 10.63 Service of complaint; service and filing of other papers.

(a) *Service of complaint.*

(1) *In general.* The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a)(2) or (3) of this section.

(2) *Service by certified or first class mail.* (i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(3) *Service by other than certified or first class mail.* (i) Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Service by this method will be considered complete, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(ii) Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent. Service by this method will be considered complete and proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(iii) Service may be made by any other means agreed to by the respondent. Proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(4) For purposes of this paragraph (a), ''respondent'' means the practitioner or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner or appraiser.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served on the respondent, or his or her authorized representative under § 10.69(a)(2) by:

(1) Mailing the paper by first class mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative,

(2) Delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative, or

(3) As provided in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section.

(c) *Service of papers on the Director of Practice.* Whenever a paper is required or permitted to be served on the Director of Practice in connection with a proceeding under this part, the paper will be served on the Director of Practice's authorized representative under § 10.69(a)(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

(d) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, the original paper, plus one additional copy, must be filed with the Administrative Law Judge at the address specified in the complaint or at an address otherwise specified by the Administrative Law Judge. All papers filed in connection with a proceeding under this part must be served on the other party, unless the Administrative Law Judge directs otherwise. A certificate evidencing such must be attached to the original paper filed with the Administrative Law Judge.

§ 10.64 Answer; default.

(a) *Filing.* The respondent's answer must be filed with the Administrative Law Judge, and served on the Director of Practice, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

(b) *Contents.* The answer must be written and contain a statement of facts that constitute the respondent's grounds of defense. General denials are not permitted. The respondent must specifically admit or deny each allegation set forth in the complaint, except that the respondent may state that the respondent is without sufficient information to admit or deny a specific allegation. The respondent, nevertheless, may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief, when the respondent possesses the required information. The respondent also must state affirmatively any special matters of defense on which he or she relies.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing.

(d) *Default.* Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under § 10.76.

(e) *Signature.* The answer must be signed by the respondent or the respondent's authorized representative under § 10.69(a)(2) and must include a statement directly above the signature acknowledging that the statements made in the answer are true and correct and that knowing and willful false statements may be punishable under 18 U.S.C. 1001.

§ 10.65 Supplemental charges.

If it appears that the respondent, in his or her answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his or her censure, suspension, disbarment, or disqualification, the Director of Practice may file supplemental charges against the respondent. The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded an opportunity to prepare a defense to such charges.

§ 10.66 Reply to answer.

The Director of Practice may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

§ 10.67 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in pleadings and the evidence adduced in support of the pleadings, the Administrative Law Judge, at any time before decision, may order or authorize amendment of the pleadings to conform to the evidence. The party who would otherwise be prejudiced by the amendment must be given a reasonable opportunity to address the allegations of the pleadings as amended and the Administrative Law Judge must make findings on any issue presented by the pleadings as amended.

§ 10.68 Motions and requests.

(a) *Motions.* At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in § 10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support. Before moving, a party must make a good faith effort to resolve with the other party any dispute that gives rise to, or is a concern of, the motion. The movant must certify such an attempt was made and state, if it is known, whether the opposing party opposes the motion.

(b) *Response.* Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, the nonmoving party is deemed to oppose the motion.

(c) *Oral motions and arguments.* The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions. The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

§ 10.69 Representation; ex parte communication.

(a) *Representation.* (1) The Director of Practice may be represented in proceedings under this part by an attorney or other employee of the Internal Revenue Service. An attorney or an employee of the Internal Revenue Service representing the Director of Practice in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the Director of Practice.

(2) A respondent may appear in person, be represented by a practitioner, or be represented by an attorney who has not filed a declaration with the Internal Revenue Service pursuant to § 10.3. A practitioner or an attorney representing a respondent or proposed respondent may sign the answer or any document required to be filed in the proceeding on behalf of the respondent.

(b) *Ex parte communication.* The Director of Practice, the respondent, and any representatives of either party, may not attempt to initiate or participate in *ex parte* discussions concerning a proceeding or potential proceeding with the Administrative Law Judge (or any person who is likely to advise the Administrative Law Judge on a ruling or decision) in the proceeding before or during the pendency of the proceeding. Any memorandum, letter or other communication concerning the merits of the proceeding, addressed to the Administrative Law Judge, by or on behalf of any party shall be regarded as an argument in the proceeding and shall be served on the other party.

§ 10.70 Administrative Law Judge.

(a) *Appointment.* Proceedings on complaints for the censure, suspension or disbarment of a practitioner or the disqualification of an appraiser will be conducted by an Administrative Law Judge appointed as provided by 5 U.S.C. 3105.

(b) *Powers of the Administrative Law Judge.* The Administrative Law Judge, among other powers, has the authority, in connection with any proceeding under § 10.60 assigned or referred to him or her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings on motions and requests, which rulings may not be appealed prior to the close of a hearing except in extraordinary circumstances and at the discretion of the Administrative Law Judge;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as needed for the orderly disposition of proceedings;

(5) Rule on offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make decisions.

§ 10.71 Hearings.

(a) *In general.* An Administrative Law Judge will preside at the hearing on a complaint filed under paragraph (c) of § 10.60 for the censure, suspension, or disbarment of a practitioner or disqualification of an appraiser. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under paragraph (g) of § 10.82 will be conducted *de novo.* An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless: the Director of Practice withdraws the complaint; the practitioner consents to a sanction pursuant to § 10.61(b); a decision is issued by default pursuant to § 10.64(d), a decision is issued under § 10.82(e); the respondent requests a decision on the record without a hearing; or the Administrative Law Judge issues a decision on a motion that disposes of the case prior to the hearing.

(b) *Publicity of proceedings.* A request by a practitioner or appraiser that a hearing in a disciplinary proceeding concerning him or her be public, and that the record of such disciplinary proceeding be made available for inspection by interested persons may be granted by the Administrative Law Judge where the parties stipulate in advance to protect from disclosure confidential tax information in accordance with all applicable statutes and regulations.

(c) *Location.* The location of the hearing will be determined by the agreement of the parties with the approval of the Administrative Law Judge, but, in the absence of such agreement and approval, the hearing will be held in Washington, D.C.

(d) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after notice of the proceeding has been sent to him or her, the party will be deemed to have waived the right to a hearing and the Administrative Law Judge may make his or her decision against the absent party by default.

§ 10.72 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings or proceedings conducted under this part. The Administrative Law Judge may, however, exclude evidence that is irrelevant, immaterial, or unduly repetitious,

(b) *Depositions.* The deposition of any witness taken pursuant to § 10.73 may be admitted into evidence in any proceeding instituted under § 10.60.

(c) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Director of Practice are admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(d) *Withdrawal of exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions that he or she deems proper.

(e) *Objections.* Objections to evidence are to be made in short form, stating the grounds for the objection. Except as ordered by the Administrative Law Judge, argument on objections will not be recorded or transcribed. Rulings on objections are to be a part of the record, but no exception to a ruling is necessary to preserve the rights of the parties.

§ 10.73 Depositions.

(a) Depositions for use at a hearing may be taken, with the written approval of the Administrative Law Judge, by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters.

(b) The party taking the deposition must provide the deponent and the other party with 10 days written notice of the deposition, unless the deponent and the parties agree otherwise. The notice must specify the name of the deponent, the time and place where the deposition is to be taken, and whether the deposition will be taken by oral or written interrogatories. When a deposition is taken by written interrogatories, any cross-examination also will be by written interrogatories. Copies of the written interrogatories must be served on the other party with the notice of deposition, and copies of any written cross-interrogation must be mailed or delivered to the opposing party at least 5 days before the date that the deposition will be taken, unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken must file the responses to the written interrogatories or a transcript of the oral deposition with the Administrative Law Judge and serve copies on the opposing party and the deponent. Expenses in the reporting of depositions will be borne by the party that requested the deposition.

§ 10.74 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Public Law 82–137)(65 Stat. 290)(31 U.S.C. 483a).

§ 10.75 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

§ 10.76 Decision of Administrative Law Judge.

(a) As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge will enter a decision in the case. The

decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, disqualification, or dismissal of the complaint. If the sanction is censure or a suspension of less than six month's duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of evidence in the record. In the event that the sanction is disbarment or a suspension of a duration of six months or longer, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proven by clear and convincing evidence in the record. The Administrative Law Judge will provide the decision to the Director of Practice and a copy of the decision to the respondent or the respondent's authorized representative.

(b) In the absence of an appeal to the Secretary of the Treasury or his or her designee, or review of the decision on motion of the Secretary or his or her designee, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

§ 10.77 Appeal of decision of Administrative Law Judge.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary of the Treasury, or his or her delegate. The respondent must file his or her appeal with the Director of Practice in duplicate and a notice of appeal must include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If the Director of Practice files an appeal, he or she must provide a copy to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director of Practice, he or she must provide a copy of it to the respondent. The Director of Practice must provide the entire record to the Secretary of the Treasury, or his or her delegate, after the appeal and any reply brief has been filed.

§ 10.78 Decision on appeal.

On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or his or her delegate, will make the agency decision. The Secretary of the Treasury, or his or delegate, will provide a copy of the agency decision to the Director of Practice and the respondent or the respondent's authorized representative. The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or his or her delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence. A copy of the agency decision or that of his or her delegate will be provided to the Director of Practice and the respondent contemporaneously.

§ 10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Director of Practice pursuant to § 10.81.

(b) *Suspension.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure.* When the final decision in the case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(d) *Conditions.* After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to conditions prescribed by the Director of Practice designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because he or she failed to advise his or her clients about a potential conflict of interest or failed to obtain the clients' written consents, the Director of Practice may require the practitioner to provide the Director of Practice or another Internal Revenue Service official with a copy of all consents obtained by the practitioner for an appropriate period following censure, whether or not such consents are specifically requested.

§ 10.80 Notice of disbarment, suspension, censure, or disqualification.

On the issuance of a final order censuring, suspending, or disbarring a practitioner or a final order disqualifying an appraiser, the Director of Practice may give notice of the censure, suspension, disbarment, or disqualification to appropriate officers and employees of the Internal Revenue Service and to interested departments and agencies of the Federal government. The Director of Practice may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

§ 10.81 Petition for reinstatement.

The Director of Practice may entertain a petition for reinstatement from any person disbarred from practice before the Internal Revenue Service or any disqualified appraiser after the expiration of 5 years following such disbarment or disqualification. Reinstatement may not be granted unless the Director of Practice is satisfied that the petitioner, thereafter, is not likely to conduct himself contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

§ 10.82 Expedited suspension upon criminal conviction or loss of license for cause.

(a) *When applicable.* Whenever the Director of Practice determines that a practitioner is described in paragraph (b) of this section, the Director of Practice may institute a proceeding under this section to suspend the practitioner from practice before the Internal Revenue Service.

(b) *To whom applicable*. This section applies to any practitioner who, within 5 years of the date a complaint instituting a proceeding under this section is served:

(1) Has had his or her license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including a failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in § 10.51(i); or

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions designed to promote high standards of conduct established pursuant to § 10.79(d).

(c) *Instituting a proceeding*. A proceeding under this section will be instituted by a complaint that names the respondent, is signed by the Director of Practice or a person representing the Director of Practice under § 10.69(a)(1), is filed in the Director of Practice's office, and is served according to the rules set forth in paragraph (a) of § 10.63. The complaint must give a plain and concise description of the allegations that constitute the basis for the proceeding. The complaint must notify the respondent—

(1) Of the place and due date for filing an answer;

(2) That a decision by default may be rendered if the respondent fails to file an answer as required;

(3) That the respondent may request a conference with the Director of Practice to address the merits of the complaint and that any such request must be made in the answer; and

(4) That the respondent may be suspended either immediately following the expiration of the period within which an answer must be filed or, if a conference is requested, immediately following the conference.

(d) *Answer*. The answer to a complaint described in this section must be filed no later than 30 calendar days following the date the complaint is served, unless the Director of Practice extends the time for filing. The answer must be filed in accordance with the rules set forth in § 10.64, except as otherwise provided in this section. A respondent is entitled to a conference with the Director of Practice only if the conference is requested in a timely filed answer. If a request for a conference is not made in the answer or the answer is not timely filed, the respondent will be deemed to have waived his or her right to a conference and the Director of Practice may suspend such respondent at any time following the date on which the answer was due.

(e) *Conference*. The Director of Practice or his or her designee will preside at a conference described in this section. The conference will be held at a place and time selected by the Director of Practice, but no sooner than 14 calendar days after the date by which the answer must be filed with the Director of Practice, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference. Following the conference, upon a finding that the respondent is described in paragraph (b) of this section, or upon the respondent's failure to appear at the conference either personally or through an authorized representative, the Director of Practice may immediately suspend the respondent from practice before the Internal Revenue Service.

(f) *Duration of suspension*. A suspension under this section will commence on the date that written notice of the suspension is issued. A practitioner's suspension will remain effective until the earlier of the following—

(1) The Director of Practice lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(2) The suspension is lifted by an Administrative Law Judge or the Secretary of the Treasury in a proceeding referred to in paragraph (g) of this section and instituted under § 10.60.

(g) *Proceeding instituted under § 10.60*. If the Director of Practice suspends a practitioner under this section, the practitioner may ask the Director of Practice to issue a complaint under § 10.60. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Director of Practice must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

Subpart E—General Provisions

§ 10.90 Records.

Availability. The Director of Practice will make available for public inspection at the Office of Director Practice the roster of all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers. Other records of the Director of Practice may be disclosed upon specific request, in accordance with the applicable disclosure rules of the Internal Revenue Service and the Treasury Department.

§ 10.91 Saving clause.

Any proceeding instituted under regulations in effect prior to July 26, 2002 that is not final prior to July 26, 2002 will not be affected by this part and will apply the rules set forth at 31 CFR part 10 revised as of July 1, 2002. Any proceeding under this part based on conduct engaged in prior to July 26, 2002, which is instituted after that date, shall apply Subpart D and E of this part, but the conduct engaged in prior to July 26, 2002 shall be judged by the regulations in effect at the time the conduct occurred.

§ 10.92 Special orders.

The Secretary of the Treasury reserves the power to issue such special orders as he or she deems proper in any cases within the purview of this part.

§ 10.93 Effective date.

Subject to § 10.91, this part is applicable on July 26, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 17, 2002.

David Aufhauser,

General Counsel, Office of the Secretary

[FR Doc. 02–18598 Filed 7–25–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–049]

RIN 2115–AE46

Special Local Regulations for Marine Events; Prospect Bay, Kent Island Narrows, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''Thunder on the Narrows'' boat races, a marine event to be held on the waters of Prospect Bay near Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Prospect Bay during the event.

DATES: This rule is effective from 9:30 a.m. (local time) on August 3, 2002 to 6:30 p.m. (local time) on August 4, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–049 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will begin on Saturday, August 3, 2002. There is not sufficient time to allow for an appropriate notice and comment period, prior to the event. Because of the danger inherent in high-speed boat races, special local regulations are necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On August 3 and August 4, 2002, the Kent Narrows Racing Association will sponsor the ''Thunder on the Narrows'' powerboat races, on the waters of Prospect Bay, Kent Island Narrows, Maryland. The event will consist of 75 Hydroplanes and Jersey Speed Skiffs racing in heats counter-clockwise around an oval racecourse. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of Prospect Bay. The temporary special local regulations will be enforced from 9:30 a.m. to 6:30 p.m. local time on both August 3 and August 4, 2002. The effect will be to restrict general navigation in the regulated areas during the event. Except for participants in the ''Thunder on the Narrows'' powerboat races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the event area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

Although this rule prevents traffic from transiting a portion of Prospect Bay during the event, the effect of this rule will not be significant due to the limited duration of the regulation, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of Prospect Bay during the event.

Although this rule prevents traffic from transiting or anchoring in a portion of Prospect Bay during the event, the effect of this rule will not be significant because of its limited duration, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

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 temporary 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 the address listed under **ADDRESSES**.

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and 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 prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 9:30 a.m. (local time) on August 3, 2002 to 6:30 p.m. (local time) on August 4, 2002, add temporary section § 100.35–T05–049 to read as follows:

§ 100.35–T05–049 Prospect Bay, Kent Island Narrows, Maryland.

(a) *Definitions.* (1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant.* Includes all vessels participating in the Thunder on the Narrows Hydroplane Races under the auspices of the Marine Event Permit, issued to the Event Sponsor and approved by Commander, Coast Guard Activities Baltimore.

(b) *Regulated area.* Includes all waters of Prospect Bay enclosed by a line connecting the following points: starting at

Latitude	Longitude
38°57′52.0″ N,	076°14′48.0″ W, thence to
38°58′02.0″ N,	076°15′05.0″ W, thence to
38°57′38.0″ N,	076°15′29.0″ W, thence to
38°57′28.0″ N,	076°15′23.0″ W, thence to
38°57′52.0″ N,	076°14′48.0″ W.

All coordinates reference Datum NAD 1983.

(c) *Special local regulations:*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(d) *Enforcement period.* This section will be enforced from 9:30 a.m. to 6:30 p.m. local time on August 3 and August 4, 2002.

Dated: July 16, 2002.

James D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–18917 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–077]

Drawbridge Operation Regulations: Hackensack River, NJ

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 governing the operation of the Route 1 & 9 Bridge, at mile 1.8, across the Hackensack River in New Jersey. This deviation allows the bridge owner to require a two-hour advance notice for bridge openings from July 12, 2002 through September 9, 2002. This action is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from July 12, 2002 through September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Route 1 & 9 Bridge has a vertical clearance of 35 feet at mean high water, and 40 feet at mean low water in the closed position. The existing drawbridge operating regulations require the bridge to open on signal at all times.

The bridge owner, New Jersey Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate scheduled structural maintenance, on the bridge.

This deviation from the operating regulations allows the bridge owner to require a two-hour advance notice for

bridge openings from July 12, 2002 through September 9, 2002.

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

Dated: July 16, 2002.

V.S. Crea,

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

[FR Doc. 02–18924 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–011]

RIN 2115–AA97

Safety Zone; Fireworks Display, Columbia River, Astoria, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of Columbia River in the vicinity of Astoria, Oregon on August 10, 2002. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 9 p.m. (PDT) to 11 p.m. (PDT) on August 10, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket (CGD 13–02–011), are available for inspection or copying at the U.S. Coast Guard MSO/Group, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jeff Pile, at (503) 240–2585.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the fireworks launching area. Due to uncertainties related to planning, the event sponsor, the Astoria Fireworks Committee, was unable to provide the Coast Guard with notice of the final details until less than 30 days prior to the date of the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest. Although this has not been an annual event, the location of this fireworks display is a locally accepted standard and safety zones have been adopted at this site with no negative public comment.

Background and Purpose

The Coast Guard is establishing a temporary safety zone to allow a safe fireworks display. The fireworks display is scheduled to start at 10 p.m. (PDT) on August 10, 2002. This event will result in a number of vessels congregating near the fireworks launching area. The safety zone is needed to provide for the safety of spectators and their watercraft from the inherent safety hazards associated with the fireworks display. Without providing for an adequate safety zone, the public could be exposed to falling burning debris or stray within blast range should a catastrophic accident occur on the launching barge. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. The safety zone will encompass all waters of the Columbia River at Astoria, Oregon within a 500-yard radius of the fireworks barge that will be in the vicinity of Green Buoy ''37'' that is in approximate position 46°11′46″ north latitude, 123°50′01″ west longitude [NAD 83]. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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 this rule under that Order. This rule is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the rule would encompass less than one mile of the Columbia for a period of only two hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' include 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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Columbia River from 9:00 p.m. (PDT) to 11:00 p.m. (PDT) on August 10, 2002. This rule will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only two hours in the evening when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

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 concern 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

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion'' is provided for temporary safety zones of less than one week in duration. This rule establishes a safety zone with a duration of two hours.

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—[AMENDED]

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 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T13–008 is added to read as follows:

§ 165.T13–008 Safety Zone; Columbia River Astoria, Oregon.

(a) *Location.* The following area is a safety zone: All waters of the Columbia River at Astoria, Oregon within a 500-yard radius of the fireworks barge that will be in the vicinity of Green Buoy ''37'' that is in approximate position 46°11′46″ north latitude, 123°50′01″ west longitude [NAD 83].

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates.* This regulation is effective on August 10, 2002 from 9 p.m. (PDT) to 11 p.m. (PDT).

Dated: July 10, 2002.

James D. Spitzer,

Captain, Coast Guard, Captain of the Port.

[FR Doc. 02–18916 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AI44

Ankylosis and Limitation of Motion of Digits of the Hands

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the evaluation criteria for ankylosis and limitation of motion of the fingers and thumb in order to assure that veterans diagnosed with these conditions receive consistent evaluations.

DATES: *Effective Date:* This amendment is effective August 26, 2002.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC, 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: As part of its review of the Schedule for Rating Disabilities (38 CFR part 4), VA published a proposal to amend that portion of the Schedule pertaining to ankylosis and limitation of motion of the fingers and thumb. The proposed rule was published in the **Federal Register** on November 2, 2001 (66 FR 55614). Interested persons were invited to submit written comments on or before January 2, 2002. We received one comment, from the Disabled American Veterans.

We proposed to change the name of the ''middle finger'' to ''long finger'' in the diagnostic codes pertaining to digit ankylosis and limitation of motion. The commenter suggested that we make the same change in diagnostic codes for finger amputations. In response, we have made that change. In addition, in current Plate III, one finger is labeled ''middle finger,'' and we will be revising that as part of the overall revision of the orthopedic system to ''long finger''. Similarly, the commenter suggested that

we change ''median transverse fold of palm'' to ''proximal transverse crease of palm'' in 38 CFR 4.71, as we proposed to do in § 4.71a. We have also made that change.

We proposed to evaluate an ankylosed digit as amputation when both joints are ankylosed, and either is in extension or ''full'' flexion. The commenter felt that the proposed ratings do not adequately provide for the disability that occurs when a finger ankylosed in flexion obstructs the other fingers and reduces the strength of the hand in gripping or grasping motions. The commenter expressed the belief that this disability is worse than an amputation and should receive a higher evaluation.

Digits that inhibit the use of other fingers are sometimes amputated if they inhibit hand function. Since 38 CFR 4.68, ''Amputation rule,'' however, prohibits an evaluation exceeding that which would be assigned if the finger were amputated, we have adopted another way of addressing this problem. In our judgment, if finger flexion deformity interferes with the function of other fingers or hand function overall, assessment of the other fingers or the hand overall should be taken into account in rating. This is both more appropriate than providing a higher evaluation for the ankylosed finger itself and consistent with the requirements of § 4.68. Provisions #2 and #5 of this portion of the rating schedule would apply in this situation. However, to assure that raters address any additional disability due to ankylosis of a single digit, we have revised the notes following the diagnostic codes for ankylosis of individual digits, which currently direct raters to consider rating as amputation, to read ''Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand''. In our judgment, this will be sufficient to alert raters to the possibility of additional disability due to a single ankylosed digit.

VA appreciates the comment submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted with the changes noted.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

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

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: May 16, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. In § 4.71, last sentence, remove ''median transverse fold of the palm'' and add, in its place, ''proximal transverse crease of palm''.

3. In § 4.71a under the tables MULTIPLE FINGER AMPUTATIONS and SINGLE FINGER AMPUTATIONS, remove ''middle'' every place it occurs and add in each place ''long''.

4. Section 4.71a is amended by removing the tables ''MULTIPLE FINGERS: UNFAVORABLE ANKYLOSIS''; MULTIPLE FINGERS: FAVORABLE ANKYLOSIS''; and ANKYLOSIS OF INDIVIDUAL FINGERS'' and adding, in their place, the following table to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND

	Rating	
	Major	Minor
(1) For the index, long, ring, and little fingers (digits II, III, IV, and V), zero degrees of flexion represents the fingers fully extended, making a straight line with the rest of the hand. The position of function of the hand is with the wrist dorsiflexed 20 to 30 degrees, the metacarpophalangeal and proximal interphalangeal joints flexed to 30 degrees, and the thumb (digit I) abducted and rotated so that the thumb pad faces the finger pads. Only joints in these positions are considered to be in favorable position. For digits II through V, the metacarpophalangeal joint has a range of zero to 90 degrees of flexion, the proximal interphalangeal joint has a range of zero to 100 degrees of flexion, and the distal (terminal) interphalangeal joint has a range of zero to 70 or 80 degrees of flexion	.....	.....
(2) When two or more digits of the same hand are affected by any combination of amputation, ankylosis, or limitation of motion that is not otherwise specified in the rating schedule, the evaluation level assigned will be that which best represents the overall disability (i.e., amputation, unfavorable or favorable ankylosis, or limitation of motion), assigning the higher level of evaluation when the level of disability is equally balanced between one level and the next higher level	.....	.....
(3) Evaluation of ankylosis of the index, long, ring, and little fingers:		
(i) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation without metacarpal resection, at proximal interphalangeal joint or proximal thereto	.....	.....
(ii) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed in a favorable position.		

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
(iii) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as unfavorable ankylosis	.....	.....
(iv) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as favorable ankylosis	.....	.....
(4) Evaluation of ankylosis of the thumb:		
(i) If both the carpometacarpal and interphalangeal joints are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation at metacarpophalangeal joint or through proximal phalanx	.....	.....
(ii) If both the carpometacarpal and interphalangeal joints are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed in a favorable position	.....	.....
(iii) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as unfavorable ankylosis	.....	.....
(iv) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as favorable ankylosis	.....	.....
(5) If there is limitation of motion of two or more digits, evaluate each digit separately and combine the evaluations	.....	.....
I. Multiple Digits: Unfavorable Ankylosis		
5216 Five digits of one hand, unfavorable ankylosis of	60	50
Note: Also consider whether evaluation as amputation is warranted.		
5217 Four digits of one hand, unfavorable ankylosis of:		
Thumb and any three fingers	60	50
Index, long, ring, and little fingers	50	40
Note: Also consider whether evaluation as amputation is warranted.		
5218 Three digits of one hand, unfavorable ankylosis of:		
Thumb and any two fingers	50	40
Index, long, and ring; index, long, and little; or index, ring, and little fingers	40	30
Long, ring, and little fingers	30	20
Note: Also consider whether evaluation as amputation is warranted.		
5219 Two digits of one hand, unfavorable ankylosis of:		
Thumb and any finger	40	30
Index and long; index and ring; or index and little fingers	30	20
Long and ring; long and little; or ring and little fingers	20	20
Note: Also consider whether evaluation as amputation is warranted.		
II. Multiple Digits: Favorable Ankylosis		
5220 Five digits of one hand, favorable ankylosis of	50	40
5221 Four digits of one hand, favorable ankylosis of:		
Thumb and any three fingers	50	40
Index, long, ring, and little fingers	40	30
5222 Three digits of one hand, favorable ankylosis of:		
Thumb and any two fingers	40	30
Index, long, and ring; index, long, and little; or index, ring, and little fingers	30	20
Long, ring and little fingers	20	20
5223 Two digits of one hand, favorable ankylosis of:		
Thumb and any finger	30	20
Index and long; index and ring; or index and little fingers	20	20
Long and ring; long and little; or ring and little fingers	10	10
III. Ankylosis of Individual Digits		
5224 Thumb, ankylosis of:		
Unfavorable	20	20
Favorable	10	10
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.		
5225 Index finger, ankylosis of:		
Unfavorable or favorable	10	10
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.		
5226 Long finger, ankylosis of:		
Unfavorable or favorable	10	10
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.		
5227 Ring or little finger, ankylosis of:		
Unfavorable or favorable	0	0

EVALUATION OF ANKYLOSIS OR LIMITATION OF MOTION OF SINGLE OR MULTIPLE DIGITS OF THE HAND—Continued

	Rating	
	Major	Minor
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.		
IV. Limitation of Motion of Individual Digits		
5228 Thumb, limitation of motion:		
With a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	20	20
With a gap of one to two inches (2.5 to 5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	10	10
With a gap of less than one inch (2.5 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers	0	0
5229 Index or long finger, limitation of motion:		
With a gap of one inch (2.5 cm.) or more between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, or; with extension limited by more than 30 degrees	10	10
With a gap of less than one inch (2.5 cm.) between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, and; extension is limited by no more than 30 degrees	0	0
5230 Ring or little finger, limitation of motion:		
Any limitation of motion	0	0

* * * * *

(Authority: 38 U.S.C. 1155)

[FR Doc. 02–18965 Filed 7–25–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MN72–7297a; FRL–7251–5]

Approval and Promulgation of Implementation Plans; Minnesota, and Designation of Areas for Air Quality Planning Purposes; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 20, 2002, the Minnesota Pollution Control Agency (MPCA) submitted to EPA a redesignation request and maintenance plan for the Saint Paul, Ramsey County particulate matter primary nonattainment area. In its submittal, the State requested that we redesignate Ramsey County to attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM) and that we approve the maintenance plan for the area into the Minnesota PM State Implementation Plan (SIP). In this action EPA is approving the state's request, because it meets all of the Clean Air Act (Act) requirements for redesignation.

If EPA receives adverse written comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This ''direct final'' rule is effective September 24, 2002, unless EPA receives written adverse or critical comments by August 26, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Christos Panos, at (312) 353–8328, before visiting the Region 5 Office.)

A copy of this redesignation request is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section(AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA. This **SUPPLEMENTARY INFORMATION** section is organized as follows:

A. What action is EPA taking?
B. Why was this SIP revision submitted?
C. Why can we approve this request?
D. What requirements must be met for approval of a redesignation, and how did the state meet them?

A. What Action Is EPA Taking?

We are approving the State of Minnesota's request to redesignate the Ramsey County PM nonattainment area to attainment of the PM NAAQS. We are also approving the maintenance plan for this area into the Minnesota PM SIP.

B. Why Was This SIP Revision Submitted?

MPCA believes that the Ramsey County PM nonattainment area is eligible for redesignation because we have approved the Saint Paul PM SIP and monitors in the nonattainment area have not recorded any exceedances of the PM NAAQS since May 1995. The redesignation request submittal consists primarily of a maintenance plan and air quality monitoring data. The submittal contains text describing how the statutory requirements were met.

C. Why Can We Approve This Request?

Consistent with the Act's redesignation requirements of section 107(d)(3)(E), EPA developed procedures for redesignation of nonattainment areas that are in an EPA September 4, 1992 memorandum titled, ''Procedures for Processing Requests to Redesignate Areas to Attainment.'' This EPA guidance document contains a number of requirements that a state must meet before it can request a change in designation for a federally designated nonattainment area. That memorandum and EPA's June 27, 2002 Technical

Support Document set forth the rationale in support of the redesignation of the Ramsey County PM nonattainment area to an attainment status.

D. What Requirements Must Be Met for Approval of a Redesignation and How Did the State Meet Them?

1. The State Must Show That the Area Is Attaining the Applicable NAAQS

There are two components involved in making this demonstration: (1) Ambient air quality monitoring representative of the area of highest concentration must show no more than one exceedance annually; and (2) EPA approved air quality modeling must show that the area in question meets the applicable standard. The 24-hour primary PM standard is 150 micrograms per cubic meter (μg/m^3), with no more than one expected exceedance per year. The annual primary PM standard is 50 μg/m^3 expected annual arithmetic mean. The secondary PM standards are identical to the primary standards.

MPCA submitted ambient air monitoring data for the years 1998–2000 and the period of January–September 2001, from two PM monitoring sites in the nonattainment area located at 1450 Red Rock Road and 1200 Warner Road. This data has been quality assured and is available for review in the Aerometric Information Retrieval System (AIRS), monitor numbers 271230866 and 271230870 respectively. No monitored exceedances of the PM NAAQS have occurred in Ramsey County since May 20, 1995.

MPCA initially submitted the modeling demonstration to EPA in 1991, 1992, and 1993. MPCA performed the modeling in accordance with the EPA document titled ''Guideline on Air Quality Models, (Revised), including Supplement A,'' 1987. The Industrial Source Complex—Short Term (ISCST) model was used for the analysis. The demonstration explicitly modeled maximum allowable emissions for all industrial sources, included an estimate of actual emissions for the diffuse area sources such as public roadways, and added in a concentration representative of local background sources. The analysis showed that, with all control measures in operation, modeled concentrations combined with background PM concentrations did not violate the NAAQS. A more detailed discussion of the modeling demonstration can be found in the June 25, 1993 proposed rulemaking on the Saint Paul PM SIP revision (58 FR 34297). We concluded on February 15, 1994 (59 FR 7218) that the air dispersion modeling met the appropriate requirements of the Act.

Due to exceedances recorded at the Red Rock Road monitor between 1992 and 1995, MPCA recognized that the PM SIP submitted in 1992 no longer sufficiently characterized the area. The State determined that the exceedances were attributable to shifts and increases in local source activity (such as traffic newly occurring on unpaved surfaces) which had occurred since development of the prior plan, and not to any deficiencies in the prior plan. The State worked with EPA and the companies involved to address the new violations with sufficient additional controls to support an updated modeled attainment demonstration. MPCA submitted SIP revisions to EPA on February 9, 1996 and July 22, 1998, that included additional control measures and updated modeling to address these exceedances.

The revised modeling incorporated all the actual Red Rock Road facilities' stack and emissions data. It also updated the modeling of other nearby PM sources within 2 to 4 kilometers of the Red Rock Road monitor. The modeling analysis demonstrated attainment and maintenance of the PM NAAQS in the Red Rock Road area. Additional information can be found in our August 13, 1999 approval of the Saint Paul PM SIP (62 FR 39120).

2. The SIP for the Area Must Be Fully Approved Under Section 110(k) of the Act and Must Satisfy All Requirements That Apply to the Area

MPCA submitted PM SIP revisions in 1991, 1992 and 1993 to fulfill the requirements of Section 110 and Part D of the Act. The enforceable elements of the State's submittals were administrative orders for nine facilities in the Saint Paul area. We approved Minnesota's submittals as satisfying the applicable requirements for the Ramsey County PM nonattainment area on February 15, 1994 (59 FR 7218). In addition, MPCA submitted supplemental SIP revisions for the Red Rock Road portion of the nonattainment area in 1996 and 1998. These submittals contained additional emission limits and/or control measures for certain facilities located along Red Rock Road, and a revised modeled attainment demonstration for the Red Rock Road area. Changes to emissions that occurred at some of the facilities, including sources in the 2–4 kilometer range of the Red Rock Road area, were included in the revised modeling demonstration. We approved the Red Rock Road supplementary PM SIP on August 13, 1999 (64 FR 44131).

3. EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

Air quality improvement in the Ramsey County PM nonattainment area is attributed to PM emission limits and operating restrictions imposed on the facilities that contributed to the nonattainment status. These limits have been incorporated into the state PM SIP, through the use of non-expiring Administrative Orders or through non-expiring Title I conditions found in Title V or federally enforceable State permits that contain the requirements of an original Administrative Order, and are therefore permanent and enforceable. The PM dispersion modeling, conducted as part of the Saint Paul PM SIP revisions, predicts that the control measures included in the SIP are sufficient to provide for attainment and maintenance of the PM NAAQS.

4. The State Has Met All Applicable Requirements Under Section 110 and Part D of the Act That Were Applicable Prior to Submittal of the Complete Redesignation Request

Section 110(a)(2) of the Act contains the general requirements for nonattainment plans. Part D contains the general requirements applicable to all areas that are designated nonattainment based on a violation of the NAAQS. These requirements are satisfied by EPA's February 15, 1994 and August 13, 1999 approvals of the nonattainment plans that Minnesota submitted for the control of PM emissions in the Ramsey County area.

A Prevention of Significant Deterioration (PSD) program will replace the requirements of the part D new source review program after redesignation of the area. To ensure that the PSD program will become fully effective immediately upon redesignation, either EPA must delegate the federal PSD program to the state or the state must make any needed modifications to its rules to have the approved PSD program apply to the affected area upon redesignation. We delegated the PSD program to the State of Minnesota on March 26, 1979, and amended the delegation on October 15, 1980 and November 3, 1988.

5. EPA Has Fully Approved a Maintenance Plan, Including a Contingency Plan, for the Area Under Section 175A of the Act

Section 107(d)(3)(E) of the Act states that, for an area to be redesignated, EPA must fully approve a maintenance plan that meets the requirements of section

175A. Section 175A(a) of the Act requires states to submit a SIP revision that provides for the maintenance of the NAAQS in the area for at least 10 years after approval of the redesignation. The basic components needed to ensure proper maintenance of the NAAQS are: attainment inventory, maintenance demonstration, verification of continued attainment, ambient air monitoring network, and a contingency plan. Further, section 175A(b) requires states to submit a SIP revision 8 years after redesignation that provides for the maintenance of the NAAQS in the area for 10 years after the expiration of the first 10-year period required by section 175A(a). EPA is approving the maintenance plan in today's action as discussed below.

a. *Attainment Inventory.* The air dispersion modeling included in the state's SIP submittals contains the emission inventory of PM sources in the Ramsey County nonattainment area.

b. *Maintenance Demonstration and Verification of Continued Attainment.* The modeling analyses submitted by MPCA demonstrate attainment and maintenance of the PM NAAQS. The PM emitting sources involved in the Ramsey County PM redesignation are meeting the PM maximum allowable emission limits identified in the modeling. Protection of the NAAQS is further assured because actual PM emissions are generally less than the allowable PM emissions considered in the modeling.

MPCA will monitor growth in the area mainly through administration of the MPCA's permitting program, keeping track of new facility permit applications and permit amendment requests and ensuring compliance with the MPCA's permitting rules. The State permitting process requires any PM source potentially emitting 25 tons a year to demonstrate, through dispersion modeling, that attainment of the NAAQS is met before the source may obtain a permit.

c. *Monitoring Network.* Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submittal, the State commits to continue to operate and maintain the network of PM monitoring stations and to report the data in AIRS to demonstrate ongoing compliance with the PM NAAQS.

d. *Contingency Plan.* Section 175A of the Act requires that the maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. MPCA included contingency measures for the Ramsey County PM nonattainment area in the Administrative Orders contained in its August 31, 1992, submittal. These measures are eligible to be used as the maintenance plan contingency measures, because the State was able to attain the PM NAAQS with the limitations and control measures already contained in the SIP approved by EPA in 1994 and the additional measures approved by EPA into the SIP in 1999.

Final Action

We have evaluated the state's submittal and have determined that it meets the applicable requirements of the Act, EPA regulations, and EPA policy. Therefore, we are approving the State of Minnesota's request to redesignate the Saint Paul, Ramsey County PM nonattainment area to attainment of the PM NAAQS. We are also approving the maintenance plan for the Ramsey County area into the Minnesota PM SIP.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective September 24, 2002 without further notice unless we receive relevant adverse written comments by August 26, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective September 24, 2002.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has

no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: July 12, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1230 is amended by adding paragraph (c) to read as follows:

§ 52.1230 Control strategy and rules: Particulates.

* * * * *

(c) Approval—On June 20, 2002, the State of Minnesota submitted a request to redesignate the Saint Paul, Ramsey County particulate matter nonattainment area to attainment of the NAAQS for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). In its submittal, the State also requested that EPA approve the maintenance plan for the area into the Minnesota PM SIP. The redesignation request and maintenance plan meet the redesignation requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.324 is amended by revising the entire entry for Ramsey County under the ''Minneapolis-Saint Paul Area'' in the table entitled ''Minnesota—PM–10'' to read as follows:

§ 81.324 Minnesota.

MINNESOTA—PM–10

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Ramsey County	September 24, 2002	Attainment		
* * *	*	*	*	*

* * * * *

[FR Doc. 02–18866 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0145; FRL–7187–8]

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of bifenthrin in or on forage and hay of orchardgrass. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on orchardgrass. This regulation establishes a maximum

permissible level for residues of bifenthrin in these feed commodities. The tolerance will expire and is revoked on June 30, 2004.

DATES: This regulation is effective July 26, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0145, must be received on or before September 24, 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 VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0145 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; e-mail address: conrath.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_0 0.html*, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0145. 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, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide bifenthrin, (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate, in or on orchardgrass, forage and orchardgrass, hay at 0.05 part per million (ppm). These tolerances will expire and are revoked on June 30, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish 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. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Bifenthrin on Orchardgrass and FFDCA Tolerances

Oregon produces nearly all of the nation's orchardgrass seed, which is primarily used as a high protein pasture grass. The key pest of orchardgrass in Oregon is the orchardgrass billbug, which lays eggs into the stem where they hatch and are unreachable by

topical insecticides. The effect of drought conditions in fields as seen in 2001 serves to magnify damage and loss associated with this pest. Chlorpyrifos once provided good efficacy against orchardgrass billbug; however, efficacy has recently dropped below acceptable levels. In addition, crop practices for long developing seed crops such as orchardgrass, and lack of readily available market for potential alternate seed and/or rotational vegetable crops preclude any cultural practices which might mitigate this pest situation. Significant yield losses, and subsequently economic losses, are expected without adequate control. EPA has authorized under FIFRA section 18 the use of bifenthrin on orchardgrass for control of orchardgrass billbug in Oregon. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of bifenthrin in or on orchardgrass forage and hay. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is establishing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2004, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on orchardgrass forage and hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed the level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether bifenthrin meets EPA's registration requirements for use on orchardgrass or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of bifenthrin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Oregon to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for bifenthrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of bifenthrin in or on orchardgrass hay and forage at 0.05 ppm.

No orchardgrass residue data were submitted for this request. The proposed use rate of bifenthrin for orchardgrass is approximately the same as that registered for use on alfalfa grown for seed. Therefore, the data from alfalfa was translated to orchardgrass for this section 18 use. The established tolerances for meat and milk commodities are adequate to cover any residues which may result from this section 18 use. Based upon previous feeding studies, the secondary residues in meat and milk will not exceed the established tolerances as a result of this section 18 use.

Residues of bifenthrin in/on orchardgrass are not expected to increase dietary exposure. Since orchardgrass is not consumed by humans, any exposure to residues of bifenthrin from this emergency exemption use will result from the consumption of meat or milk. The use of bifenthrin in orchardgrass is not expected to result in exceedances of the tolerances that already exist for meat and milk. Therefore, establishing the orchardgrass tolerances will not increase the most recent estimated aggregate risks resulting from the use of bifenthrin, as discussed in the **Federal Register** for September 27, 2001 (66 FR 49300) (FRL–6801–5) final rule establishing a tolerance for residues of bifenthrin in/on sweet potatoes, because in that prior action, risk was estimated assuming all meat and milk commodities contained tolerance level residues. Refer to the September 27, 2001 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies 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. A summary of the toxicological dose and endpoints for bifenthrin for use in human risk assessment is discussed in Unit IV.A. of the final rule mentioned above, published in the **Federal Register** of September 27, 2001 (66 FR 49300) (FRL–6801–5).

EPA assessed risk scenarios for bifenthrin under acute, chronic, and short- and intermediate-term exposures.

The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The following assumptions were made for the acute exposure assessments: A probabilistic Monte Carlo analysis (Tier 3) was used; PCT (% crop treated) and anticipated residues were used for registered uses, and 100% crop treated was assumed for all other uses.

Using these exposure assessments, the EPA concluded that exposure to bifenthrin from food will utilize 60% of the acute population adjusted dose (aPAD) for the U.S. population, 40% for females 13 years and older, 75% for all infants <1 year old, and 99.7% of the aPAD for children 1 to 6 years old. In addition, despite the potential for acute dietary exposure to bifenthrin in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model estimated environmental concentrations (EECs) of

bifenthrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 1.

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO BIFENTHRIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
US Population (48 states)	0.01	60	0.1	0.006	140
Female 13+ years old	0.01	40	0.1	0.006	180
Children (1–6 years old)	0.01	99.7	0.1	0.006	0.30

The following assumptions were made for the chronic exposure assessments: The Agency used anticipated residue values which were determined from field trial data collected from studies conducted with maximum label rates and minimum preharvest intervals. Mean anticipated residue values were calculated. 100% crop treated was assumed for all crops except hops (43%) and cottonseed oil and meal (4%).

Using these exposure assessments, the EPA concluded that exposure to bifenthrin from food will utilize 3% of the chronic population adjusted dose (cPAD) for the US population, 3% for females 13 years and older, and 8.2% of the cPAD for children 1 to 6 years old. Based on the use pattern, chronic residential exposure to residues of bifenthrin is not expected. In addition, despite the potential for chronic dietary exposure to bifenthrin in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of bifenthrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENTHRIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (48 states)	0.015	3	0.032	0.006	530
Females 13+ years old	0.015	3	0.032	0.006	450
Children (1–6 years old)	0.015	8.2	0.032	0.006	140

Bifenthrin has been classified as a Group C chemical (possible human carcinogen) based upon urinary bladder tumors in mice. No Q* was assigned because the Reference dose (RfD) approach was recommended for cancer risk assessment. Based on this recommendation, a quantitative dietary cancer risk assessment was not performed since dietary risk concerns due to long-term consumption of bifenthrin are adequately addressed by the chronic exposure analysis using the RfD.

Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Bifenthrin is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for bifenthrin. EPA has concluded that food and residential exposures aggregated result in aggregate margin of exposure (MOEs) of 940 for adults, 350 for children (1–6 years old), and 470 for infants < 1 year old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of bifenthrin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT AND INTERMEDIATE-TERM EXPOSURE TO BIFENTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Adult	940	100	0.032	0.006	320
Children (1–6 years old)	350	100	0.032	0.006	270
Infants <1 year old	470	100	0.032	0.006	71

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to bifenthrin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone

number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no Codex maximum residue limits (MRLs) established for bifenthrin on grass forage and hay. Therefore, no compatibility problems exist for the proposed tolerances.

C. Conditions

One application may be made. A maximum of 0.10 pound of active ingredient may be applied per acre using ground equipment. Bifenthrin is not to be applied within 30 days of grazing, feeding, or harvesting (cutting) forage or hay.

VI. Conclusion

Therefore, the tolerances are established for residues of bifenthrin, (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylate, in or on orchardgrass forage, and orchardgrass hay at 0.05 ppm.

VII. 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–2002–0145 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 September 24, 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 VII.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 the docket control number OPP–2002–0145, 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).

VIII. Regulatory Assessment Requirements

This final rule establishes a time limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections

subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. 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: July 12, 2002.

Ricard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.442 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Orchardgrass, forage	0.05	6/30/04
Orchardgrass, hay	0.05	6/30/04
* * * * *		

* * * * *

[FR Doc. 02–18867 Filed 7–25–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0142; FRL–7187–4]

1-Methylcyclopropene; 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 1-Methylcyclopropene (1-MCP) in or on fruits and vegetables when used as a post harvest plant growth regulator, i.e., for the purpose of inhibiting the effects of ethylene. AgroFresh, Inc. (formerly BioTechologies for Horticulture) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 1-MCP.

DATES: This regulation is effective July 26, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0142, must be received on or before September 24, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0142 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Driss Benmhend, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9525; e-mail address:Benmhend.driss@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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

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

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

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0142. 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 June 21, 2000 (65 FR 38550) (FRL–6589–5), EPA issued a notice pursuant to section 408(d)(3) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d)(3), as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP OF6144) by AgroFrech, Inc. (formerly BioTechnologies for Horticulture, Inc.), 100 Independence Mall West, Philadelphia, PA 19106–2399. As required by section 408(d)(2)(A)(i)(I), this notice included a summary of the petition prepared by the petitioner AgroFresh, Inc. There were no comments received in response to the notice of filing.

Section 408(c)(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(c)(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. . . .'' Additionally, section 408(b)(2)(D) requires that 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 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 end-use product, a white powder, when mixed with water or a buffer solution releases the gas 1-MCP. The active ingredient acts an inhibitor to ethylene, by blocking the attachment of ethylene to tissue, and thus, prolongs the life of the food commodity treated.

Toxicity studies submitted in support of the tolerance exemption petition, and the Agency reviews are compiled in the official record established for this action under the docket ID number OPP–2002–0142.

1. *Acute toxicity (MRIDs 444647–04 to 08).* 1-MCP exhibits low acute toxicity. It is a category IV biopesticide. The rat oral LD_{50} is greater than 5,000 milligrams/kilograms (mg/kg), the rabbit dermal LD_{50} is greater than 2,000 mg/kg and the rat inhalation LC_{50} is greater than 2.5 milligram/liter (mg/L) (or greater than 1,126 parts per million (ppm) v/v active ingredient in air). No deaths or clinical signs of systemic toxicity were observed following these acute exposures. 1-MCP produces minimal irritation of skin and eyes in rabbits and 1-MCP is not a skin sensitizer. No hypersensitivity incidents were observed following exposure to 1-MCP.

2. *Genotoxicity (MRID 444647–09).* 1-MCP was not mutagenic when tested as a gas in several short-term *in vitro/in vivo* assays, including a bacterial reverse mutation assay (Ames test), an *in vitro* mammalian point mutation assay in Chinese hamster ovary cells, an *in vitro* cytogenetics assay in human lymphocytes and an *in vivo* mouse micronucleus assay following inhalation exposure. In addition, 1-MCP is not mutagenic when tested as a suspension in cell media in the Ames test and in the *in vitro* mouse lymphoma forward mutation assay (MRID 444647–10) and is not mutagenic in the *in vivo* mouse micronucleus assay (MRID 444747–11) following oral exposure (gavage).

3. *Developmental toxicity (MRID 454586–08).* 1-MCP produces no developmental toxicity when tested in a standard developmental toxicity study in the rat via inhalation at concentrations up to and including 2.3 mg a.i./L (or 543 mg a.i./kg/day, 6 hr exposure/day). The no observed adverse effect level (NOAEL) for maternal toxicity was 0.24 mg a.i./L (56 mg a.i./kg/day, 6 hr exposure/day).

4. *Subchronic toxicity (MRID 456090-01).* 1-MCP was tested in a 90–day inhalation study at doses of 0.05, 0.24 and 2.3 mg a.i./kg in the rat. The NOAEL is 0.05 mg a.i./L (equivalent to 9 to 15 mg a.i./kg/day), based on minimal to mild effects on spleen and kidney histopathology at 0.24 mg a.i./L (equivalent to 39 to 66 mg a.i./kg/day). In this study there was no evidence of neurotoxicity, no effects on the respiratory tract and no effects on pathology of any endocrine or reproductive organs up to and including the highest dose tested of 2.3 mg a.i./L (or equivalent to 380 to 640 mg a.i./kg/day).

5. AgroFresh (the applicant) submitted a waiver request for the immune response data requirements based on the current toxicological data submitted on 1-MCP. The review of the 3–month inhalation rat study (mentioned in the previous paragraph) indicates, no effects on thymus weight and no effects on the histopathology of the thymus, bone marrow or spleen that would be attributed to an impact on the immune system were seen. There were no effects on white blood cell differential parameters (including monocytes, lymphocytes, segmented neutrophils or eosinophils) and no basophils were observed which may be indicative of an allergic reaction. The Agency concluded that 1-MCP did not induce dysfunction or inappropriate suppressive responses in components of the immune system. As a result, immune response data requirements were waived.

6. *Other.* 1-MCP has a mode of action in plants which is a non-persistent and non-toxic mode of action. 1-MCP prevents the natural chemical, ethylene, from binding to ethylene receptors in plants. This mode of action is not relevant in animals, since ethylene receptors are not present in animal tissues.

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

1. *Food—From food and feed uses.* The primary source for human exposure to 1-MCP will be from ingestion of the following raw food commodities and the processed food commodities derived from: apples, melons, tomatoes, pears, avocadoes, mangoes, papayas, kiwifruit, plums, apricots and persimmons. Studies submitted (MRID 456090–02) showed residues in treated apples to be extremely low (average residue was 0.004 ppm using an exaggerated treatment rate of 1,200 parts per billion (ppb) versus the 1,000 ppb proposed label rate). A worst-case scenario (using the 0.004 ppm average residue concentration found in treated apples and assuming that concentration is present in 100% of the diet regardless of crops treated) indicates that a daily diet of 1.5 kg/day could contain 0.006 mg 1-MCP. For the general population (assuming an average body weight of 60 kg), this would represent a daily intake of 0.0001 mg 1-MCP/kg body weight which is 90,000 to 150,000-fold less than the 9-15 mg/kg NOAEL indicated in the 90–day inhalation study.

Residues in other treated commodities are expected to be similar or even lower since the highest treatment rate is recommended for apples. Processing would be expected to further lower the residue levels in processed food commodities.

2. *Drinking water exposure.* Since 1-MCP will only be used on post-harvested fruits and vegetables in enclosed storage areas, there is little if any, potential for drinking water exposure.

B. Other Non-Occupational Exposure

The potential for non-dietary exposure to 1-MCP for the general population, is unlikely because potential use sites are commercial, agricultural, and horticultural. 1-MCP is currently registered for indoor, nonfood commercial use on flowers and ornamentals. The Agency has approved that use, based on the data submitted that show little potential for significant non-occupational exposure to the general population.

1. *Dermal exposure.* 1-MCP will only be sold enclosed in a generator for treatment of raw agricultural commodities. The generator will not release 1-MCP until the applicator has exited the storage area and entrances to the treatment area have been sealed. At

the end of the treatment period, the storage area will be vented before workers are permitted to reenter the area. This label mitigating language would eliminate the potential for dermal exposure to handlers or applicators.

2. *Inhalation exposure*. As mentioned in the previous paragraph, the use of this product according to the label instructions would result in little, if any, inhalation exposure to handlers or applicators.

V. Cumulative Effects

The Agency has considered the cumulative effects of 1-MCP and other substances in relation to a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. There is no indication of mammalian toxicity at the maximum doses tested, of this or other products containing 1-MCP.

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

1. *U.S. population*. There is reasonable certainty that no harm will result from aggregate exposure to residues of 1-MCP to the U.S. population. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity (no toxicity at the maximum doses tested, Toxicity Categories III and IV) and the minimum exposure associated with 1-MCP's use.

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (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 unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that 1-MCP is practically non-toxic to mammals, including infants and children. Thus, there are no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, based on the lack of observed developmental toxicity and extremely low exposure, there is reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to 1-MCP residues. Exemption of 1-MCP from the requirements of a tolerance should pose no significant risk to humans or the environment

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA as amended by FQPA to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the program, the androgen- and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program(EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been developed, 1-MCP may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

Based on available data, no endocrine system-related effects have been identified with consumption of 1-MCP. In addition, 1-MCP does not share any structural similarity to any known endocrine disruptive chemical.

B. Analytical Method(s)

EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above, including 1-MCP's lack of mammalian toxicity. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for 1-MCP.

C. Codex Maximum Residue Level

No Codex maximum residue levels are established for residues of 1-MCP in or on any food or feed crop. There are no established tolerances or exemptions from tolerance for 1-MCP in the United States. The Agency has classified 1-MCP as a biochemical pesticide.

VIII. Conclusions

Based on the toxicology data submitted, there is reasonable certainty no harm will result from aggregate exposure of residues of 1-MCP to the U.S. population, including infants and children, when the proposed product is used in accordance with label instructions and good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which reliable data were submitted, accepted and reviewed. The Agency has arrived at this conclusion based on the data submitted demonstrating no toxicity at the maximum doses tested. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of 1-MCP in or on all food commodities.

IX. 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 ID number OPP–2002–0142 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 September 24, 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 IX.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 ID number OPP–2002–0142, 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).

X. 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 tolerance 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.

XI. 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: July 16, 2002.

Marcia E. Mulkey,

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 180.1220 is added to subpart D to read as follows:

§ 180.1220 1-Methylcyclopropene; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of 1-Methylcyclopropene in or on fruits and vegetables when used as a post harvest plant growth regulator, i.e., for the purpose of inhibiting the effects of ethylene.

[FR Doc. 02–18868 Filed 7–25–02; 8:45am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–3074–F2]

RIN 0938–AK98

Medicare Program; End-Stage Renal Disease: Removing of Waiver of Conditions for Coverage Under a State of Emergency in the Houston, Texas Area

AGENCY: Centers for Medicare & Medicaid Services (CMS).

ACTION: Final rule.

SUMMARY: This final rule removes an emergency waiver of the Medicare end-stage renal disease (ESRD) conditions for coverage granted to permit the transplant team of an approved renal transplant center to furnish kidney transplant services in three specific hospitals in the Houston, Texas area during a state of emergency. The state of emergency has ceased, the primary kidney transplant center in the area is now fully operational, and the effective period of the waiver provisions has expired.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Rachael Weinstein, (410) 786–6775

SUPPLEMENTARY INFORMATION

I. Provisions of This Rule

On June 20, 2001, we published a final rule in the **Federal Register** (66 FR 33030–33031) that granted an emergency waiver of the Medicare end-stage renal disease (ESRD) conditions of coverage to permit the transplant team of an approved renal transplant center to furnish covered kidney transplant services in three specific hospitals in the Houston, Texas area during a state of emergency. The state of emergency (a natural disaster due to flooding) resulted in a severe health and safety threat to hospitals in the entire Houston, Texas area, including ESRD facilities that were approved to furnish kidney transplant services. Waivers of the conditions of coverage were granted to Memorial Hermann-Memorial City Hospital, Memorial Hermann Southwest Hospital, and Memorial Hermann Southeast Hospital to permit an approved transplant team to furnish kidney transplant services in the three hospitals, effective June 15, 2001, through the earlier of December 15, 2001, or until Memorial Hermann Hospital, the primary kidney transplant center, reopened.

Memorial Hermann Hospital is now reopened. In the June 20, 2001 final rule, we amended the Medicare regulations to include a new § 405.2175 that incorporated the waiver provisions. In § 405.2175, we specified that we would publish a rule removing the waiver provisions from the regulations after the waiver expired. The waiver has expired and we are removing the provisions from the Medicare regulations.

II. Waiver of Proposed Rulemaking and Delay of Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on a proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the findings and its reasons in the rule issued.

Further, we generally provide for final rules to be effective no sooner than 30 days after the date of publication unless we find good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date. The purpose of the 30-day waiting period between publication of an administrative agency final rule and its effective date is to give affected parties reasonable time to adjust their behavior before the final rule takes place.

The state of emergency under which we granted a waiver of the ESRD conditions of coverage is now over in the Houston, Texas area, and Memorial Hermann Hospital is reopened to furnish kidney transplant services. We announced in the June 20, 2001 final rule our intention to remove the

emergency waiver when the waiver expired, as well as our intention to publish a rule removing § 405.2175 from our regulations after the waiver expired. We find good cause to waive a notice-and-comment procedure to remove the waiver provisions from the regulation. We believe that a notice-and-comment procedure is unnecessary because the June 20, 2001 final rule puts the public on notice that the waiver of the conditions for coverage for the specifically named hospitals was created to address a public health crisis in Houston and it was to be of limited duration (it was to remain in effect until no later than December 15, 2001). This rule merely conforms the Medicare regulation to the mandate expressed by the agency on June 20. Therefore, we are waiving notice-and-comment procedures under 5 U.S.C. 553(b)(3)(B).

Given the fact that the waiver has already expired by its own terms, we find good cause to waive the 30-day delay in the effective date established by 5 U.S.C. 553(d)(3). We believe that delaying the effective date of this regulation is unnecessary since it does not require the public to adjust its behavior before the final rule takes place.

List of Subjects in 42 CFR Part 405

Administrative practice and procedures, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Part 405, Subpart U as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD)

1. The authority citation for Part 405, Subpart U continues to read as follows:

Authority: Secs. 1102, 1138, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1320b–8, 1365x, 1395y(a), 1395hh, 1395kk, and 1395rr, unless otherwise noted).

§ 405.2175 [Removed]

2. Section 405.2175 is removed.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: March 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 2, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–17622 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

CMS–1883–F3

RIN 0938–AI80

Medicare Program; Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications; Technical Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Technical correction.

SUMMARY: In the October 10, 2000 issue of the **Federal Register** (65 FR 60104), we published a technical correction to the August 5, 1999 issue of the **Federal Register** (64 FR 42610). This technical correction amends the regulations text to correct an inadvertent error that occurred when the Code of Federal Regulations (CFR) was published. It also explains a technical correction that is accurately reflected in the current language as it appears in the CFR, as it was intended in the correction notice of October 10, 2000.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Julie Stankivic, (410) 786–5725.

SUPPLEMENTARY INFORMATION:

Background

In the October 10, 2000 technical correction (65 FR 60104), we amended the regulations text to make technical corrections to those parts of the regulation unrelated to the skilled nursing facilities (SNFs) exception procedures that were inadvertently changed. In the regulations text corrected under 42 CFR 413.30(d), we stated that we were removing the words ''the type of'' from the first sentence. It was our intention to remove these words; however, we referenced the first sentence, and these words were found in the second sentence. We note that the regulations text as published in the Code of Regulations (CFR) actually accurately reflects the change that was intended in the correction notice of October 10, 2000. Therefore, we are not amending the regulations text in this technical correction.

In addition, in the most recent publication of the CFR in § 413.30(d), the word ''as'' has been inadvertently removed from the third sentence. In the October 10, 2000 technical correction, we did not intend to make any changes that would have resulted in the removal of the word ''as'' after the phrase ''has operated'' in the third sentence of § 413.30(d). We are reinserting the word as no change was intended.

Provisions of the Technical Correction

We are making the necessary technical correction to the regulations text to restore the text to conform to the stated purpose of the correction notice.

Waiver of Notice of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this document merely provides a technical correction to the regulations and does not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and record keeping requirements.

Corrections to the Regulations Text

Accordingly, 42 CFR part 413 is corrected by making the following correcting amendment:

PART 413–PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883,

and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395(g), 13951(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.30 [Corrected]

2. In paragraph (d) the word ''as'' is added after the phrase ''has operated'' in the third sentence.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: April 25, 2002.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 02–17620 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 146

[CMS–2033–IFC]

RIN 0938–AK00

Technical Change to Requirements for the Group Health Insurance Market; Non-Federal Governmental Plans Exempt From HIPAA Title I Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period amends the exemption election requirements that apply to self-funded non-Federal governmental plans. In it, we clarify the circumstances under which plan sponsors may exempt these plans from most of the requirements of title XXVII of the Public Health Service (PHS) Act and provide guidance on the procedures, limitations, and documentation associated with exemption elections.

In this interim final rule with comment period, we provide that a sponsor of a self-funded, non-Federal governmental plan may elect to exempt its plan from the Women's Health and Cancer Rights Act of 1998. Additionally, we revise a number of procedural requirements affecting the exemption election process and establish certain enrollee protections with respect to exemption elections.

In response to public comments on an interim final rule published in the **Federal Register** on April 8, 1997 (62 FR 16894), we amend our regulation to clarify that nothing in the statute or regulation affects a State's right to limit the extent to which its non-Federal governmental employers may exempt their self-funded plans from title XXVII of the PHS Act.

Finally, we include a technical correction to our regulation on guaranteed availability of health insurance coverage for employers in the small group market.

DATES: *Effective date:* These regulations are effective on September 24, 2002.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 4 p.m. on September 24, 2002.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2033–IFC, P.O. Box 8010, Baltimore, MD 21244–8010.

To ensure that mailed comments are received in time for us to consider, please allow for possible delays in delivery.

If you prefer, you may deliver (by hand or courier) your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–2033–IFC. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: David Holstein, (410) 786–1565.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection in Room C5–16–03, 7500 Security Blvd., Baltimore, Maryland 21244–1850, generally beginning approximately 3 weeks after the document has been published. Members of the public who are interested in reviewing timely public comments are asked to schedule an appointment by calling (410) 786–9994 Monday through Friday from 8:30 a.m. to 5 p.m.

Availability of Copies, and Electronic Access

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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.*

I. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added a new title XXVII to the PHS Act to establish various reforms to the group and individual health insurance markets. The group market reforms are contained under Part A of title XXVII, which includes, among other things, guaranteed availability of coverage to small group market employers and renewability of coverage in the small and large group markets; limitations on pre-existing condition exclusion periods; special enrollment periods under certain circumstances; and prohibition of discrimination against individual participants and beneficiaries based on health status.

Part A of title XXVII was amended by the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), the Mental Health Parity Act of 1996 (MHPA), and the Women's Health and Cancer Rights Act of 1998 (WHCRA), which added new sections 2704, 2705 and 2706 (subpart 2 of Part A of title XXVII), respectively. NMHPA provides protections for mothers and newborn children for hospital stays following childbirth. MHPA, which applies to group health plans sponsored by employers with more than 50 employees, provides for parity between annual and lifetime dollar limits applicable to mental health benefits, and annual and lifetime dollar limits applicable to medical and surgical benefits. WHCRA requires group health plans that provide medical and surgical benefits for mastectomies to cover, among other things, reconstructive

surgery and prostheses following a mastectomy.

Section 2721(b)(2) of the PHS Act, as added by HIPAA and implemented at 45 CFR 146.180, permits non-Federal governmental employers to elect to exempt self-funded portions of their group health plans (that is, benefits not provided through health insurance coverage) from most of the requirements of title XXVII of the PHS Act. (This practice is sometimes referred to in this preamble as ''opting out of HIPAA.'') However, health plans cannot be exempted from certification and disclosure of creditable coverage requirements under section 2701(e) of the PHS Act.

We received numerous inquiries as to whether non-Federal governmental entities may ''opt out'' of various requirements added by NMHPA, MHPA and WHCRA, which were enacted after the initial HIPAA legislation. Section 2721(b)(2) of the PHS Act permits a plan sponsor of a self-funded non-Federal governmental plan to elect to exempt its group health plan from the requirements of ''subparts 1 through 3'' of Part A of title XXVII (except with respect to section 2701(e) of subpart 1). Therefore, the requirements of sections 2704, 2705 and 2706, which comprise subpart 2 of Part A of title XXVII, fall within the scope of section 2721(b)(2).

II. Technical Correction to § 146.150 Guaranteed Availability of Coverage for employers in the small group Market

The regulation at § 146.150(d)(2), which was intended to track the statute (section 2711(d)(2) of the PHS Act), misstates a statutory requirement. Under section 2711(d)(2), an issuer that denies group health insurance coverage to any small employer in a State on the basis that the issuer does not have financial reserves necessary to underwrite additional coverage, is prohibited from offering additional coverage in the small group market in the State for a period of 180 days after the date coverage is denied, or until the issuer demonstrates to the applicable State authority, if required under State law, that the issuer has sufficient financial reserves to underwrite additional coverage, ''whichever is later.'' However, § 146.150(d)(2) is worded in a way that the issuer is required to wait 180 days after it demonstrates renewed financial capacity before it may offer additional coverage in the small group market.

Section 146.150(d)(2), which was simply intended to track the statute, is revised to correctly reflect section 2711(d)(2) of the PHS Act. Because the revision is a technical correction that is required by statute, the effective date of this revision is as if it was included in the regulations published on April 8, 1997 in the **Federal Register** at 62 FR 16894; that is, on June 7, 1997.

III. Analysis of and Response to Public Comments Received on the April 8, 1997 Interim Final Rule

(For ease of reference, unless otherwise specified, the acronym ''HIPAA,'' as used subsequently in this preamble, refers to title I of HIPAA, as well as to NMHPA, MHPA, and WHCRA, and ''HIPAA requirements'' refers to requirements of all of these statutes.)

We received two letters of comment in response to the April 8, 1997 interim final rule with comment period published in the **Federal Register** (62 FR 16894) that pertained exclusively to 45 CFR 146.180 ''Treatment of non-Federal governmental plans.''

Comment: One commenter noted that there appeared to be an inconsistency in HIPAA between an amendment made to the PHS Act, and another amendment made to the Internal Revenue Code (the Code). The PHS Act, as amended by HIPAA, provides that non-Federal governmental plans are subject to HIPAA (while permitting self-funded non-Federal governmental plans to elect to be exempted); the Internal Revenue Code, as amended by HIPAA, states that HIPAA amendments to the Code do not apply to governmental plans. The commenter requested that we clarify whether the PHS Act or the Code is the appropriate authority.

Response: The group market provisions of HIPAA made parallel amendments to the PHS Act, the Internal Revenue Code, and the Employee Retirement Income Security Act (ERISA). However, the HIPAA provisions of each statute *generally* apply to a different set of entities. In particular, the PHS Act applies to health insurance issuers and non-Federal governmental plans, and the Code applies to employer-sponsored group health plans (including church plans) except governmental plans. The fact that the Code does not reference non-Federal governmental plans simply means that the Code is not the source of HIPAA requirements for those plans. Rather, the PHS Act is the source of those requirements. Thus, non-Federal governmental plans are subject to HIPAA (except to the extent that the plan sponsor has elected to exempt a self-funded plan under section 2721(b)(2) of the PHS Act), and authority for enforcing HIPAA requirements with respect to non-Federal governmental plans rests with HHS in accordance with section 2722(b)(1)(B) of the PHS Act.

Comment: The commenter stated that § 146.180 should be amended to clarify that an election to exempt a plan from HIPAA means that the plan becomes subject to State law, including any applicable provisions that might parallel the requirements of HIPAA. The commenter noted that governmental plans are exempted from ERISA, and, accordingly, some States regulate their State and local plans. The commenter cited section 2723(a) of the PHS Act, presumably as the authority for adopting the suggested change.

Response: We adopt the recommendation, but not on the basis of section 2723(a). Section 2723(a) of the PHS Act addresses the preemption of State laws'' * * * solely relating to health insurance issuers in connection with group health insurance coverage. * * *'' Self-funded plans are not provided through health insurance issuers. Section 2721(b)(2) of the PHS Act permits only plan sponsors of self-funded non-Federal governmental plans to elect to exempt their plans from HIPAA requirements.

There is nothing in section 2721(b)(2) that prevents a State, by law, regulation, or other State action having the effect of law, from establishing State requirements for non-Federal governmental plans that parallel HIPAA requirements, or from simply limiting the extent to which its non-Federal governmental employers may elect to exempt their self-funded plans from HIPAA requirements. States are free to regulate group health plans of non-Federal governmental employers because governmental group health plans, unlike group health plans sponsored by private employers, are exempt from ERISA requirements under section 4(b)(1) of ERISA. (Section 514(a) of ERISA preempts State laws relating to employee benefit plans, including group health plans, that are subject to ERISA.) We amend 45 CFR 146.180 by adding a new paragraph (l) *Construction* to make clear that HIPAA does not interfere with a State's right to regulate non-Federal governmental plans. (This change is referenced in section IV.L. of this preamble.)

IV. Amendments to § 146.180 ''Treatment of non-Federal Governmental Plans''

This regulation amends § 146.180 by redesignating existing paragraphs and adding new text to this section. For reference purposes, a redesignation table is provided at the end of this section for specific citations under § 146.180.

A. Paragraph (a) Requirements Subject to Exemption

We amend § 146.180 by revising paragraph (a) and adding four new paragraphs. New paragraph (a)(1) summarizes the former prefatory text of § 146.180 and adds WHCRA requirements to the list of HIPAA requirements from which a non-Federal governmental plan sponsor may elect to exempt its self-funded plan.

New paragraph (a)(2)(i) clarifies that an exemption election cannot circumvent a HIPAA requirement to the extent the requirement applied to the plan before the effective date of the exemption election. Examples are provided.

New paragraph (a)(2)(ii) clarifies that if a group health plan is co-sponsored by two or more employers, only those participants and dependents enrolled in the plan through the non-Federal governmental employer or employers that have opted out of HIPAA are affected by the opt-out election. This limitation is in accordance with the express language of section 2721(b)(2) of the PHS Act, which permits only ''* * * the plan sponsor of a nonfederal governmental plan'' to opt out of HIPAA with regard to self-funded plans. To the extent a plan is sponsored by an employer that is not a governmental employer, the plan is not a ''non-Federal governmental plan,'' which is defined at § 144.103 to mean ''a governmental plan established or maintained for its employees by the government of any State or political subdivision thereof, or by any agency or instrumentality of either.'' Similarly, to the extent a plan is co-sponsored by governmental employers, not all of which have elected to opt out of HIPAA, HIPAA applies with respect to enrollees of the non-Federal governmental employers that have not opted out.

New paragraph (a)(3) deals with stop-loss or excess risk coverage. In general, the purchase of stop-loss or excess risk coverage by a self-funded non-Federal governmental plan has no effect on the plan sponsor's ability to opt out of HIPAA. However, if coverage offered by an issuer as stop-loss or excess risk coverage is regulated as group health insurance coverage under State law that has not been preempted by ERISA or otherwise invalidated by any court, then for purposes of § 146.180, the non-Federal governmental plan that purchases the coverage is considered to be fully insured. In that event, the plan is not permitted to opt out of HIPAA.

Accordingly, a sponsor of a non-Federal governmental plan that wishes to opt out of HIPAA should ensure that the stop-loss policy being considered is not regulated as group health insurance coverage by the State. Paragraph (a)(3) applies solely for purposes of § 146.180.

New paragraph (a)(4) clarifies that nothing in part 146 imposes collective bargaining obligations on any party to the collective bargaining process. However, as stated in the preamble to our initial HIPAA regulations published on April 8, 1997 in the **Federal Register** (62 FR 16906), § 146.180 does not preempt State and local collective bargaining laws. While neither title XXVII of the PHS Act nor this regulation mandates that HIPAA protections be collectively bargained, State or local law may do so.

B. Paragraph (b) Form and Manner of Election

(A model election document is provided under section V. of this preamble as an example to assist the reader.) Paragraph (b) is amended to list the requirements pertaining to the form and manner of an opt-out election under a new paragraph (b)(1). Paragraph (b)(1)(iii) incorporates existing paragraphs (d)(1) and (2) (with the exception of the parenthetical statement in the existing (d)(2), which is incorporated in a new paragraph (b)(2)). Paragraph (b)(1)(iii) requires an election document to include a statement specifying the beginning and ending dates of the applicable election period. That period may be a single specified plan year, or, in the case of a collectively bargained plan, the ''term of the agreement'' as defined in paragraph (b)(2) (discussed below). In order to facilitate administrative efficiency, paragraph (b)(1)(iv) requires the election document to include the name and telephone number of a person CMS may contact regarding the election.

New paragraph (b)(2) defines ''term of the agreement,'' and clarifies the extent to which an opt-out election applies to the initial plan year under a collective bargaining agreement and the last plan year governed by the agreement. Except as provided in new paragraphs (b)(2)(i) and (ii), paragraph (b)(2) provides that for purposes of the opt-out provision, ''term of the agreement'' means all plan years governed by a single collective bargaining agreement.

For the last plan year governed by a collective bargaining agreement, it has come to our attention that a collective bargaining agreement may expire before the last plan year governed by the agreement expires. In that event, we interpret the statutory reference to an opt-out election applying ''for the term of such agreement'' to mean that the election applies to the last plan year (in its entirety) governed by a particular collective bargaining agreement. For instance, a collective bargaining agreement may expire on December 31 and the last group health plan year governed by that agreement may expire on June 30 of the following year. If, in this example, the plan sponsor decided not to renew its opt-out election, HIPAA requirements would *not* take effect in the middle of the plan year (that is, on January 1), but rather on July 1, the first day of the plan year following expiration of the last plan year governed by the prior collective bargaining agreement.

For purposes of the opt-out provision, new paragraph (b)(2), which incorporates and revises the parenthetical statement of existing paragraph (d)(2), may effectively extend the last plan year under a prior collective bargaining agreement or shorten the initial plan year under a new agreement. Paragraph (b)(2)(i) provides that if the last plan year governed by a collective bargaining agreement expires during the bargaining process for a new agreement, the term of the prior agreement continues until the latest of the following dates, as applicable: the date agreement is reached for the new agreement, the date of ratification of the agreement, or other closure of the collective bargaining process. Under paragraph (b)(2)(ii), the term of the new agreement begins at that point.

This rule revises the existing rule, which provided that the parties to the collective bargaining process had to ''agree'' that the prior agreement continued until the new agreement took effect. For purposes of the opt-out provision, we are revising the rule by deleting the precondition that the parties must agree to the extension, because the collective bargaining process should not, by default, cause HIPAA requirements that were not previously in effect to take effect, nor, conversely, to effectively permit a plan sponsor, for the period preceding closure of the collective bargaining process for a new agreement, to retroactively opt out of HIPAA requirements that continue to be in effect under a prior agreement.

Under section 2721(b)(2) of the PHS Act, the opt-out decision is vested solely in the plan sponsor (in the absence of applicable State law or regulation). Thus, it is our position that in instances when collective bargaining for a new agreement extends beyond the contract expiration date under which a plan was exempt from HIPAA requirements, those requirements should not take effect by default (merely because the

union does not agree that the prior agreement is extended), and thereby prevent a plan sponsor from electing to opt out of those requirements under the new agreement. This situation could arise in the case of a collectively bargained plan that is exempt from HIPAA requirements under the special effective date rule of section 102(c)(3) of HIPAA and § 146.125(a)(2) of the implementing regulations, and in the case where a plan was exempt from HIPAA requirements under a prior opt-out election.

The special effective date rule provides that for a group health plan that is governed by one or more collective bargaining agreements that were ratified before enactment of HIPAA (that is, before August 21, 1996), the requirements of title I of HIPAA do not take effect until the last of those collective bargaining agreements expires. The last of the collective bargaining agreements ratified before August 21, 1996 may expire before closure is reached for a new agreement. Also, the period of time during which a plan is exempt from HIPAA requirements under a prior opt-out election could expire before closure is reached for a new agreement and the opt-out election is renewed.

We believe that the rule permitting a HIPAA exemption to continue during the collective bargaining process for a new agreement does not unduly affect enrollees because the plan was previously exempt from HIPAA requirements. (Of course, if collective bargaining that continues beyond the beginning of a plan year leads to an agreement that the plan will comply with one or more HIPAA requirements that legitimately did not apply to the plan under the prior agreement, the plan must comply with the requirement(s) retroactively to the first day of the initial plan year governed by the new agreement.) The special rules for the term of the agreement under paragraphs (b)(2)(i) and (ii) apply only for purposes of § 146.180; that is, only for HIPAA requirements from which a plan opts out under the new agreement.

On the other hand, to the extent a plan was subject to HIPAA requirements under a prior agreement, a plan sponsor's decision to opt out of HIPAA for those requirements must have prospective effect in order to ensure that enrollees that have benefited from those HIPAA requirements cannot be disadvantaged retroactively. This situation could arise in the case of a collectively bargained plan that is subject to HIPAA because the plan sponsor had not previously opted out, as well as in the case of a plan that is generally exempt from HIPAA requirements under the special effective date rule discussed above, but that was amended solely to conform the plan to any HIPAA requirement, as permitted under section 102(c)(3) of HIPAA and § 146.125(a)(2) of the implementing regulations.

When a plan has been in compliance with one or more HIPAA requirements, there is a greater need to strike a balance between the interests of the plan and the interests of enrollees. For a collectively bargained plan that is in compliance with HIPAA, we believe that enrollees expect the plan to continue to comply with those requirements unless otherwise notified. The same is true of new enrollees. Permitting a plan in that situation, following closure of the collective bargaining process, to retroactively opt out of HIPAA to the first day of the plan year could seriously disadvantage enrollees.

For instance, under the prior collective bargaining agreement, a plan was in compliance with HIPAA. An enrollee with a serious medical condition enrolls in the plan under the HIPAA special enrollment period rules during ongoing collective bargaining with respect to a new agreement. Two months later, after a collective bargaining agreement has been reached, the plan sponsor opts out of the special enrollment period requirements effective with the beginning of the first plan year governed by the new agreement. Conceivably, in the absence of this rule, the plan could attempt to disenroll the individual retroactively, causing great financial harm to that individual. (This situation would not arise in the case where a plan under the prior agreement was exempt from the special enrollment period rules because, under that exemption, the individual would not have been entitled to a special enrollment period.) Thus, the definition of ''term of the agreement'' in paragraph (b)(2) precludes the possibility that someone who properly benefitted under HIPAA could be retroactively deprived of that benefit.

New paragraph (b)(3) clarifies that we do not arbitrate disputes regarding whether an opt-out election complies with all of a plan sponsor's rules. These disputes must be resolved by the parties to the election or by the courts. Also, paragraph (b)(3) clarifies that if a plan must comply with one or more HIPAA requirements for a given plan year or period of plan coverage, the plan sponsor is free to opt out of those requirements for a subsequent plan year or period of plan coverage. For instance, a plan may comply with HIPAA requirements because the plan sponsor declined to opt out, or decided after opting out to rescind its election in whole or in part. Also, a plan might have to comply with HIPAA requirements because its opt-out election is invalidated in whole or in part by CMS (refer to sections IV.J. & K of this preamble) or by a court order. Such occurrences do not inhibit a plan sponsor's ability to opt out of HIPAA requirements for subsequent plan years.

C. Paragraph (c) Mailing Address

A new paragraph (c) is added to specify the mailing address for a non-Federal governmental employer to mail its opt-out election.

D. Paragraph (d) Filing a Timely Election

Under paragraph (d)(1), which incorporates existing paragraph (c)(1), we made a minor revision to the filing deadline for an opt-out election for a plan that is not governed by a collective bargaining agreement. Since under the existing rule we had to *receive* the election document before the first day of the plan year, new paragraph (d)(1) now provides that, subject to a good cause extension, the election document must be filed (that is, mailed) before the first day of the plan year.

In new paragraph (d)(2), which incorporates existing paragraph (c)(2), we revise the filing deadline for a plan that is governed by a collective bargaining agreement. The existing regulation stipulates that an election must be received by us within 30 days after certain events associated with collective bargaining. New paragraph (d)(2) provides that, subject to an extension based on good cause, an election for a plan governed by a collective bargaining agreement must be filed (that is, mailed) before the first day of the first plan year governed by the agreement, or by the 45th day after the latest of the following dates, as applicable, if the 45th day falls on or after the first day of the plan year: the date of the agreement between the governmental employer and union officials; the date of ratification of the agreement; or the date impasse resolution, arbitration, or other closure of the collective bargaining process is finalized when agreement is not reached. (Paragraph (d)(2) incorporates these dates via cross reference to paragraph (b)(2)(i).) The date of impasse resolution, arbitration or other closure of the collective bargaining process is included to make clear that a non-Federal governmental plan sponsor is not foreclosed under HIPAA from opting out in the event agreement is not

reached with the union through collective bargaining.

Paragraph (d)(3) specifies that we will use the postmark on the envelope in which the election is submitted to verify timely filing.

Paragraph (d)(4), which incorporates existing paragraph (c)(3), clarifies that we may extend the filing deadlines established in paragraphs (d)(1) and (d)(2) by finding good cause if a plan substantially complies with the requirements of paragraph (f) of this regulation to notify enrollees of an opt-out election at the time of enrollment and on an annual basis. For example, we could find that good cause exists for extending an election filing deadline in a case where a plan is not in violation of paragraph (f) and a plan sponsor states that there was a miscommunication between the plan sponsor and another entity that administers the plan regarding which entity was to file the election document with us.

Under certain situations, we may find good cause even if the plan sponsor does not make a specific request. For example, the sponsor of a self-funded non-Federal governmental plan decides to opt out of HIPAA for an upcoming plan year that begins on January 1. During the annual open enrollment period, all employees are given a plan brochure that contains a prominently printed notice that the plan will be exempt from HIPAA requirements for the upcoming plan year. After the plan year begins, all new enrollees are provided notice of the opt-out election at the time of enrollment. Five months into the plan year, the Personnel Department discovers that it did not file an election document with us. It belatedly files the document, which includes a statement that the plan has complied with the enrollee notification requirements of paragraph (f) of this regulation. However, the plan sponsor does not request an extension of the filing deadline for good cause. In this case, we may find that good cause exists to accept the election as being timely filed.

We believe that extending the filing deadlines in situations such as these is appropriate. Enrollees are entitled to the group health plan benefit package offered by the plan sponsor. As long as a plan has complied with the enrollee notification requirements regarding an opt-out election, extending the election filing deadlines does not disadvantage enrollees beyond the extent to which they are disadvantaged directly by the statute, which permits non-Federal governmental employers that sponsor self-funded plans to opt out of HIPAA.

Paragraph (d)(5), which incorporates and revises existing paragraph (c)(4), provides that, absent an extension based on good cause, if an election is not timely filed, the plan becomes subject to HIPAA requirements for the entire plan year to which the election would have applied, or, in the case of a plan governed by collective bargaining, for any plan year under the agreement for which the election is not timely filed.

For a collectively bargained plan, in paragraph (d)(5) we revise the requirement of existing paragraph (c)(4) that provides that failure to file a timely election subjects the plan to HIPAA requirements for the term of the collective bargaining agreement. It is our position that it is inequitable to penalize a plan governed by collective bargaining to a greater extent than other plans, which, in the case of untimely filing, must comply with HIPAA requirements only for the single plan year to which the election would have applied. Therefore, in the case of a collectively bargained plan, the plan must comply with HIPAA requirements only for plan years for which the election is not timely filed.

For instance, a collective bargaining agreement governs a group health plan for a period of 5 years, but the plan sponsor does not submit its opt-out election to us until after the third plan year has begun. The plan complies with the enrollee notification requirements of paragraph (f) of this regulation beginning with the third plan year governed by the agreement. The plan must comply with HIPAA requirements solely with respect to the first 2 plan years governed by the collective bargaining agreement. Under the revised regulation, the election is considered to be filed timely with regard to the remaining 3 plan years.

E. Paragraph (e) Additional Information Required

This paragraph provides that, in response to a notice from us, a plan sponsor, or the entity that filed the election if other than the plan sponsor, must submit additional information by the end of the plan year or 45 days after the date of the written notification, whichever is later. We will use the postmark on the envelope in which the additional information is submitted to verify timely filing. We may invalidate an election in the event of a failure to respond timely.

F. Paragraph (f) Notice to Enrollees

(A model enrollee notice is provided under section V. of this preamble as an example to assist the reader.)

This paragraph consolidates existing paragraphs (f) and (g). Paragraph (f)(1)(i) provides that a plan must notify enrollees of an opt-out election and explain the consequences of the election. If the dependents of a participant reside with the participant, the plan need only provide a notice to the participant.

Paragraph (f)(1)(ii) provides that the opt-out notice must be in writing, and, subject to notice rules associated with the initial plan year under an opt-out election, must be given to enrollees at the time of enrollment, and on an annual basis, which generally means that the notice to plan enrollees must be provided no later than the last day of each plan year for which there is an election. Thus, in general, the annual notice may be provided to plan enrollees prior to the beginning of a plan year—for instance, during an annual open enrollment period—or at any time during a plan year. Also, paragraph (f)(1)(iii) clarifies that a notice provided to an enrollee at the time of enrollment can also serve as the initial annual notice for that enrollee. That is, a plan is not required to give an enrollee more than one notice with respect to a given plan year.

Paragraph (f)(2) sets forth new special rules applicable to notices associated with the initial plan year under an opt-out election. For a plan not governed by a collective bargaining agreement, paragraph (f)(2)(i) states that a plan must provide the annual notice to all enrollees *before* the first day of that plan year, and at the time of enrollment to individuals who enroll during that plan year.

For a collectively bargained plan, paragraph (f)(2)(ii) states that the plan must provide the annual notice for the initial plan year under an election before the first day of that plan year, or within 30 days after the latest of the following dates, as applicable, if the 30th day falls on or after the first day of the plan year: the date of the agreement between the governmental employer and union officials; the date of ratification of the agreement; or the date impasse resolution, arbitration, or other closure of the collective bargaining process is finalized when agreement is not reached. (Paragraph (f)(2)(ii) incorporates these dates via cross reference to paragraph (b)(2)(i)). Also, the plan must provide a notice at the time of enrollment to all individuals who enroll on or after the first day of the plan year when closure of the collective bargaining process is reached prior to the beginning of the plan year, or to individuals who enroll on or after the date of closure of the collective

bargaining process, if that date falls on or after the first day of the plan year.

For the initial plan year that is subject to an opt-out election, this regulation requires that the annual notice be provided ''up front'' to ensure that plan enrollees are informed from the beginning that their rights under HIPAA are limited. This is consistent with the intent of the statute that enrollees have this knowledge from the beginning, that is, from ''the time of enrollment.'' This rule ensures that individuals who are already enrolled in the plan when the initial opt-out election takes effect will not be deprived of important information relevant to their health benefits, and the rule will help to eliminate situations where an enrollee assumes he or she is protected under HIPAA only to discover later that he or she is not.

For instance, if an enrollee who has had a mastectomy would be eligible to switch to other coverage, but declines to do so because she expects to have WHCRA protections under the non-Federal governmental plan, clearly she would be disadvantaged upon learning several months later (after it is too late to switch coverage) that she does not have those protections. Similarly, if someone covered under the plan expects to adopt a child, he or she may be relying on the fact that there are special enrollment rights under HIPAA, perhaps only to discover after the child is adopted that the plan sponsor has opted out of the special enrollment period requirements.

However, for a plan that is governed by collective bargaining, a plan may not be able to provide the initial opt-out notice by the beginning of the plan year because of ongoing collective bargaining. Under section 2721(b)(2) of the PHS Act, a plan must notify enrollees of the ''fact and consequences'' of an opt-out election. When a plan sponsor's intention to opt out of HIPAA is subject to collective bargaining, an (initial) election does not in ''fact'' exist until the collective bargaining process with respect to the election is completed. Therefore, when closure of the collective bargaining process occurs after the beginning of the initial plan year to which the election is to apply, a plan cannot disseminate a notice regarding the ''fact'' of that election prior to the point of closure.

In that event, individuals who enroll in the plan on or after the first day of the initial plan year that is to be subject to an opt-out election, but before closure of the collective bargaining process, are not entitled to an opt-out notice at the time of enrollment because the election in ''fact'' does not exist at that point. However, these individuals are afforded some protection by the rule in paragraph (b)(2) that prohibits an opt-out election from taking effect retroactively. (Refer to the previous discussion under item IV.B of this preamble.) Also, these individuals along with other enrollees will receive the annual notice, which must be provided within 30 days after closure of the collective bargaining process. Individuals who enroll on or after the date of closure of the collective bargaining process must be given a notice at the time of enrollment.

New paragraph (f)(3) incorporates existing paragraph (g) for notice content. A new paragraph (f)(3)(v) requires that the notice to plan enrollees regarding the opt-out election include a statement informing plan enrollees that the plan will provide for certification and disclosure of creditable coverage for covered employees and their dependents who lose coverage under the plan. This requirement is designed to benefit plan enrollees by ensuring that plans inform them of their rights regarding certification and disclosure of creditable coverage, regardless of the plan sponsor's decision to exempt the plan from other HIPAA requirements.

G. Paragraph (g) Subsequent Elections

(A model election renewal document is provided under section V. of this preamble as an example to assist the reader.)

New paragraph (g)(1) incorporates existing paragraph (e), and states that election renewals are subject to the timeliness standards in paragraph (d). Paragraph (g)(2) addresses the form and manner of renewing an election.

Paragraph (g)(3) specifies that if an opt-out election renewal includes a HIPAA requirement from which the plan sponsor did not elect to exempt the plan for the preceding plan year, the advance notification requirements that apply to initial elections (paragraph (f)(2)) also apply for the additional HIPAA requirements from which the plan sponsor is electing to exempt the plan. As in the case of initial elections, this rule requires that the annual notice be provided ''up front'' to ensure that plan enrollees are informed from the beginning that the plan sponsor is electing to exempt the plan from certain HIPAA requirements from which the plan was not exempted under the previous opt-out election.

Paragraph (g)(4) specifies new special rules regarding the renewal of an election under a collective bargaining agreement. Paragraph (g)(4)(i) requires that if protracted negotiations for a new agreement result in an extension of the term of the prior agreement under which an opt-out election was in effect (Refer to the previous discussion in section IV.B of this preamble), the plan sponsor must comply with the enrollee notification requirements of paragraph (f)(1), and file an election renewal with us in accordance with the time frames specified in paragraph (d)(2).

Also, if a non-Federal governmental employer provides coverage to employees and dependents under a single group health plan, but enters into separate collective bargaining agreements of varying lengths with various bargaining units, paragraph (g)(4)(ii) specifies that in the case of an election renewal, the timeliness standards of paragraph (d)(2) apply to the plan as governed by the agreement that results in the earliest filing date.

H. Paragraph (h) Certification and Disclosure of Creditable Coverage

Existing paragraph (h) is retained with minor editorial changes.

I. Paragraph (i) Effect of Failure to Comply With Certification and Notification Requirements

This paragraph revises existing paragraphs (i)(1) and (2). New paragraph (i)(1) generally provides that a substantial failure to comply with the enrollee notification requirements of paragraph (f) or the certification and disclosure requirements of paragraph (h) results in the invalidation of an opt-out election with respect to all plan enrollees for the entire plan year.

We determine whether a non-Federal governmental plan has substantially failed to comply based on a review of all relevant facts and circumstances, including the previous record of compliance, gravity of the violation, and whether the plan takes corrective action, as warranted, within 30 days of learning of the violation. However, in general, a failure to provide the opt-out notice to an enrollee at the time of enrollment or on an annual basis is considered to be a substantial failure to comply. In the case of a substantial failure that is limited to certain individuals, CMS may permit the election to remain in effect if the plan agrees not to apply the election with respect to the affected individuals for the plan year with respect to which the failure has occurred and so informs those individuals in writing.

New paragraph (i)(1) further specifies that in the case of a plan that is sponsored by multiple employers, the invalidation applies only for the employer(s) responsible for the substantial failure, and not for other employers that complied with the

requirements of paragraphs (f) or (h), unless the plan chooses to cancel its election entirely. For example, if 10 non-Federal governmental employers co-sponsor a plan, and one employer substantially fails to comply with the requirements of paragraph (f), the invalidation applies only with respect to enrollees of that one employer (unless the plan chooses to cancel its election entirely).

Examples illustrating the rules of new paragraph (i)(1) are provided in new paragraph (i)(2).

J. Paragraph (j) Election Invalidated

Paragraph (j) specifies the rules that apply if we invalidate an opt-out election.

K. Paragraph (k) Enforcement

Existing paragraph (i) (3) is redesignated and revised as new paragraph (k). Paragraph (k) cross-refers to part 150 of 45 CFR under which we enforce HIPAA requirements that apply to non-Federal governmental plans, including imposing a civil money penalty on a plan or plan sponsor when a non-Federal governmental plan is subject to the requirements of part 146 and fails to comply with one or more of those requirements. All non-Federal governmental plans must comply with requirements pertaining to certification and disclosure of creditable coverage under section 2701(e) of the PHS Act and § 146.115.

Paragraph (k) applies not only to a plan for which an election has not been filed, or for which an election has been invalidated, but also to a plan that has selectively opted out of HIPAA requirements and fails to comply with any requirements that are not subject to the opt-out election. For instance, a plan opts out of the preexisting condition exclusion limitations only, but also fails to comply with requirements pertaining to special enrollment periods. We enforce the special enrollment period rules under part 150.

L. Paragraph (l) Construction

This paragraph clarifies that States are not precluded from restricting the extent to which their non-Federal governmental employers may opt out of HIPAA. (Refer to our response to public comments on the April 8, 1997 interim final rule with comment period published in the **Federal Register** (62 FR 16894) that appears under section III. of this preamble.)

REDESIGNATION TABLE FOR § 146.180

Existing designation	New designation
Prefatory text and paragraph (a)	Paragraph (a)(1).
Paragraph (b)	Paragraph (b)(1).
Paragraph (c)(1) and (2)	Paragraph (d)(1) and paragraph (d)(2).
Paragraph (c)(3)	Paragraph (d)(4).
Paragraph (c)(4)	Paragraph (d)(5).
Paragraph (d)(1) and paragraph (2) (except parenthetical)	Paragraph (b)(1)(iii).
Paragraph (d)(2) (parenthetical)	Paragraph (b)(2)(i) and Paragraph (b)(2)(ii).
Paragraph (e)	Paragraph (g)(1).
Paragraph (f)	Paragraph (f)(1).
Paragraph (g)	Paragraph (f)(3).
Paragraph (h)	Paragraph (h).
Paragraph (i)(1) and paragraph (i)(2) (except invalidation notice)	Paragraph (i)(1).
Paragraph (i)(2) (invalidation notice)	Paragraph (j).
Paragraph (i)(3)	Paragraph (k).

V. Model Election/Election Renewal Document; Model Notice to Plan Enrollees

To assist non-Federal governmental employers that wish to exercise their option to exempt their self-funded plans from requirements of title XXVII of the PHS Act, we have developed a model election/election renewal document, and a model notice to plan enrollees. Use of these model documents, which are presented below, is not required. However, use of these model documents will satisfy applicable requirements of § 146.180(b)(1), (f)(3) and (g)(2). We encourage you to access these model documents at our Web site at *http://www.cms.hhs.gov/hipaa1.*

A. Model HIPAA Exemption Election/Election Renewal Document

The following may be submitted on plan sponsor's or plan administrator's letterhead:

Name of Plan: _____
Plan Sponsor: _____
Address: _____
(Not applicable if election document is on letterhead showing the plan sponsor's address.)
EIN: _____
Plan Number: _____ (if applicable)
Plan Year/Period of Plan coverage:
(beginning date) through (ending date)
(may reflect multiple plan years governed by a collective bargaining agreement.)
Plan Administrator:
Address: (If different from plan sponsor's)

(Name of plan, or portion of plan that is self-funded) is not provided through insurance. (Plan sponsor) elects under authority of section 2721(b)(2) of the Public Health Service (PHS) Act, and 45 CFR 146.180 of Federal regulations, to exempt (name of plan or self-funded portion) from the following requirements of title XXVII of the PHS Act (list any or all of the following requirements):

1. Limitations on preexisting condition exclusion periods.

2. Special enrollment periods.

3. Prohibitions against discriminating against individual participants and beneficiaries based on health status.

4. Standards relating to benefits for mothers and newborns.

5. Parity in the application of certain limits to mental health benefits.

6. Required coverage for reconstructive surgery following mastectomies.

This election has been made in conformity with all rules of the plan sponsor, including any public hearing, if required. I certify that the undersigned is authorized to submit this election on behalf of (name of plan). A copy of the notice to plan enrollees is enclosed. (In the case of an election renewal, in lieu of enclosing a copy of an updated notice to plan enrollees, the plan sponsor may include a statement that the notice has been, or will be, provided to plan enrollees in accordance with 45 CFR 146.180(f).) If CMS has any questions regarding this election, please contact (name) at (phone number).

Signature
Title

B. Model Notice to Enrollees in a Self-Funded Non-Federal Governmental Group Health Plan

Under a Federal law known as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, as amended, group health plans must generally comply with the requirements listed below. However, the law also permits State and local governmental employers that sponsor health plans to elect to exempt a plan from these requirements for any part of the plan that is ''self-funded'' by the employer, rather than provided through a health insurance policy. (Name of plan sponsor) has elected to exempt (name of plan) from (all) (or specify which ones) of the following requirements:

[The description of each listed requirement may be omitted.]

1. *Limitations on preexisting condition exclusion periods.* A preexisting condition exclusion period generally may not exceed 12 months, and generally must be reduced by prior health coverage an individual has had. Also, a plan may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition, nor, under certain conditions, with respect to newborns or children adopted or placed for adoption.

2. *Special enrollment periods.* Group health plans are required to provide special enrollment periods for individuals who do not enroll in the plan because they have other coverage, but subsequently lose that coverage. Also, if a plan provides dependent coverage, the plan must provide a special enrollment period for new dependents (and the employee if not already enrolled) within 30 days after a marriage, birth, adoption or placement for adoption.

3. *Prohibitions against discriminating against individual participants and beneficiaries based on health status.* A group health plan may not discriminate in enrollment rules or in the amount of premiums or contributions it requires an individual to pay based on certain health status-related factors: health status, medical condition (physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability.

4. *Standards relating to benefits for mothers and newborns.* Group health plans offering health coverage for hospital stays in connection with the birth of a child generally may not restrict benefits for the stay to less than 48 hours for a vaginal delivery, and 96 hours for a cesarean section.

5. *Parity in the application of certain limits to mental health benefits.* Group health plans (of employers that employ more than 50 employees) offering mental health benefits may not set annual or lifetime dollar limits on mental health benefits that are lower than limits for medical and surgical benefits. A plan that does not impose an annual or lifetime dollar limit on medical and surgical benefits may not impose that type of limit on mental health benefits. These requirements do not apply to benefits for substance abuse or chemical dependency.

6. *Required coverage for reconstructive surgery following mastectomies.* Group health plans that provide medical and surgical benefits for a mastectomy must provide certain benefits in connection with breast reconstruction as well as certain other related benefits.

The exemption from these Federal requirements will be in effect for the (plan year) (period of plan coverage) beginning (specify date) and ending (specify date). The election may be renewed for subsequent plan years.

(If the Plan provides protections similar to any of the exempted requirements, either voluntarily or in accordance with State law, identify those protections.)

HIPAA also requires the Plan to provide covered employees and dependents with a ''certificate of creditable coverage'' when they cease to be covered under the Plan. There is no exemption from this requirement. The certificate provides evidence that you were covered under this Plan, because if you can establish your prior coverage, you may be entitled to certain rights to reduce or eliminate a preexisting condition exclusion if you join another employer's health plan, or if you wish to purchase an individual health insurance policy. (If someone will be available to answer questions, an appropriate contact, such as a third party administrator, or personnel officer may be identified).

VI. Response to Comments on this Interim Final Rule

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, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Waiver of Proposed Rulemaking

In accordance with the requirements of the Administrative Procedures Act (APA), we ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment before a final rule is made effective. The notice of proposed rulemaking required by the APA incorporates a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We are making various discretionary changes to the prior April 8, 1997 interim final rule (62 FR 16894) at § 146.180 under the broad authority granted by the Congress to the Secretary of Health and Human Services—''The Secretary may promulgate any interim final rules as the Secretary determines are appropriate to carry out this title [XXVII of the PHS Act].'' (Section 2792 of the PHS Act, as added by HIPAA, Public Law 104–191.) Because this broad regulatory authority was made a permanent part of title XXVII of the PHS Act, it has continuing effect with respect to any rules the Secretary may promulgate for purposes of carrying out title XXVII of the PHS Act. We believe that it serves the public interest to issue these regulations in accordance with the authority granted by the Congress under section 2792 of the PHS Act.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this rule as an interim final rule with comment period. We are providing a 60-day public comment period and will respond to major comments we receive in any subsequent **Federal Register** document.

VIII. 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 an information collection should be approved by OMB, section 3506(c)(2)(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.

The reporting and disclosure requirements referenced under § 146.180 are currently approved under OMB number 0938–0702 (HIPAA Group Market Information Collection Requirements), with a current expiration date of December 31, 2002.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to OMB for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, DCES, SSG, Attn: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; ATTN: CMS 0047–F

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

IX. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 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).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies.

For purposes of the RFA, all political subdivisions of States, and any agency or instrumentality of these political subdivisions, are considered to be small entities. Individuals and States are not included in the definition of a small entity.

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. This regulation does not have the effect of imposing unfunded mandates on State or local governments.

We have previously estimated that between 3,500 and 5,000 non-Federal governmental plans would be affected by § 146.180 (62 FR 16927, April 8, 1997). (Only non-Federal governmental entities that provide group health plan coverage to employees on a self-funded basis (not through health insurance coverage) are eligible to elect to exempt their plans from the requirements of title XXVII of the PHS Act.) To date, we have received approximately 650 elections covering fewer than 2,000 non-Federal governmental entities, virtually all of which are small entities for purposes of the RFA.

As a group, non-Federal governmental entities that elect to opt out of HIPAA are diverse and difficult to categorize. Depending on the circumstances, elections can vary tremendously, from single plan groups, to those which incorporate multiple political and plan subdivisions. There have also been cases where plan sponsors that initially sought exemption from HIPAA requirements have subsequently elected to bring their plans into HIPAA compliance. Although there is no way to estimate the number of additional non-Federal governmental entities that will elect to exempt their plans from HIPAA requirements, based on our experience to date, we maintain that most of the eligible non-Federal governmental entities that intend to exempt their plans from one or more HIPAA requirements have already done so.

The Women's Health and Cancer Rights Act of 1998 (WHCRA) was effective for plan years beginning on or after October 21, 1998. However, we believe that, in general, non-Federal governmental entities that were eligible, but declined to exempt their plans from the requirements of HIPAA , the Newborns' and Mothers' Health Protection Act of 1996, and the Mental Health Parity Act of 1996 are not likely to elect to exempt their plans from the requirements of WHCRA. Thus, we do not anticipate that the number of opt-out elections will increase substantially as a result of WHCRA. Accordingly, we estimate that fewer than 2,000 non-Federal governmental entities are affected by these regulations, and we expect that number to remain fairly stable.

Non-Federal governmental entities are subject to these regulations *only* if they *elect* to exempt their plans from any requirements of title XXVII of the PHS Act. We did not consider alternatives to these regulations because regulations are necessary to modify existing regulations at § 146.180. Moreover, section 2721(b)(2)(A) of the PHS Act expressly calls for regulations—plan sponsors of non-Federal governmental plans may elect to exempt their self-funded group health plans from the requirements of title XXVII ''in such form and manner as the Secretary may by regulations prescribe.''

These regulations are designed to assist non-Federal governmental employers in exercising their prerogative under section 2721(b)(2) to exempt eligible plans from various requirements of title XXVII of the PHS Act, and to clarify that States are not precluded by section 2721(b)(2) and § 146.180 from limiting the extent to which non-Federal governmental plan sponsors may elect to exempt their self-funded group health plans from HIPAA requirements. The effect of not issuing these regulations would be to deprive non-Federal governmental employers and States of information pertinent to implementing section 2721(b)(2) of the PHS Act. However, not issuing these regulations would have negligible economic consequences for non-Federal governmental employers. The requirement that group health plans must notify enrollees regarding an exemption election at the time of enrollment and on an annual basis is prescribed by the statute. Our initial implementing regulations (62 FR 16894, April 8, 1997) address the consequences of a plan's failure to comply with those statutory enrollee notification requirements—a plan's exemption election is invalidated, and the plan must come into compliance with HIPAA requirements. Thus, the potential for incurring costs associated with bringing a plan into HIPAA compliance as a result of a plan's failure to comply with the enrollee notification requirements already exists and would not accrue to non-Federal governmental employers if these regulations are not issued.

For these reasons, 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 12866, this regulation was reviewed by the Office of Management and Budget.

X. Federalism

We have reviewed this regulation under the threshold criteria of Executive Order 13132. We have determined that this interim final rule with comment period does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects in 45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance.

For the reasons set forth in the preamble, 45 CFR Part 146 is amended as set forth below:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

A. Part 146 is amended as set forth below.

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

Authority: Secs. 2701 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–23, 300gg–91, and 300gg–92).

2. In § 146.150, paragraph (d)(2) is revised to read as follows:

§ 146.150 Guaranteed availability of coverage for employers in the small group market.

* * * * *

(d) Application of financial capacity limits.

* * * * *

(2) An issuer that denies group health insurance coverage to any small employer in a State under paragraph (d)(1) of this section may not offer coverage in connection with group health plans in the small group market in the State before the later of the following dates:

(i) The 181st day after the date the issuer denies coverage.

(ii) The date the issuer demonstrates to the applicable State authority, if required under applicable State law, that the issuer has sufficient financial reserves to underwrite additional coverage.

* * * * *

3. Section 146.180 is revised to read as follows:

§ 146.180 Treatment of non-Federal governmental plans.

(a) *Requirements subject to exemption.* (1) *Basic rule.* A sponsor of a non-Federal governmental plan may elect to exempt its plan, to the extent that the plan is not provided through health insurance coverage, (that is, it is self-funded), from any or all of the following requirements:

(i) Limitations on preexisting condition exclusion periods described in § 146.111.

(ii) Special enrollment periods for individuals and dependents described in § 146.117.

(iii) Prohibitions against discriminating against individual participants and beneficiaries based on health status described in § 146.121.

(iv) Standards relating to benefits for mothers and newborns described in § 146.130.

(v) Parity in the application of certain limits to mental health benefits described in § 146.136.

(vi) Required coverage for reconstructive surgery and certain other services following a mastectomy under section 2706 of the PHS Act.

(2) *Limitations.* (i) An election under this section cannot circumvent a requirement of this part to the extent the requirement applied to the plan before the effective date of the election.

(A) *Example 1.* A plan is subject to requirements of section 2706 of the PHS Act, under which a plan that covers medical and surgical benefits with respect to a mastectomy must cover reconstructive surgery and certain other services following a mastectomy. An enrollee who has had a mastectomy receives reconstructive surgery on August 24. Claims with respect to the surgery are submitted to and processed by the plan in September. The group health plan commences a new plan year each September 1. Effective September 1, the plan sponsor elects to exempt its plan from section 2706 of the PHS Act. The plan cannot, on the basis of its exemption election, decline to pay for the claims incurred on August 24.

(B) *Example 2.* An individual is hired by a non-Federal governmental employer and reports to work on August 6. The individual has diabetes. Under the terms of the plan in effect on August 6, if an individual files an enrollment application within the first 30 days of employment, enrollment in the plan is effective as of the first day of employment. The individual timely files an enrollment application. The application is processed on September 10. The group health plan commences a new plan year each September 1. Effective September 1, the plan sponsor elects to exempt its plan from § 146.121, which prohibits enrollment discrimination based on health status-related factors, by requiring new enrollees to pass medical underwriting. The plan cannot decline to enroll the individual effective August 6, even if he would not pass medical underwriting under the terms of the plan in effect on September 1.

(ii) If a group health plan is co-sponsored by two or more employers, then only plan enrollees of the non-Federal governmental employer(s) with a valid election under this section are affected by the election.

(3) *Stop-loss or excess risk coverage.* For purposes of this section—(i) Subject to paragraph (a)(3)(ii), the purchase of stop-loss or excess risk coverage by a self-funded non-Federal governmental plan does not prevent an election under this section.

(ii) Regardless of whether coverage offered by an issuer is designated as ''stop-loss'' coverage or ''excess risk'' coverage, if it is regulated as group health insurance under an applicable State law, then for purposes of this section, a non-Federal governmental plan that purchases the coverage is considered to be fully insured. In that event, a plan may not be exempted under this section from the requirements of this part.

(4) *Construction.* Nothing in this part should be construed as imposing collective bargaining obligations on any party to the collective bargaining process.

(b) *Form and manner of election.* (1) *Election requirements.* The election must meet the following requirements:

(i) Be made in writing.

(ii) Be made in conformance with all of the plan sponsor's rules, including any public hearing requirements.

(iii) Specify the beginning and ending dates of the period to which the election is to apply. This period can be either of the following periods:

(A) A single specified plan year, as defined in § 144.103 of this subchapter.

(B) The ''term of the agreement,'' as specified in paragraph (b)(2) of this section, in the case of a plan governed by collective bargaining.

(iv) Specify the name of the plan and the name and address of the plan administrator, and include the name and telephone number of a person CMS may contact regarding the election.

(v) State that the plan does not include health insurance coverage, or identify which portion of the plan is not funded through health insurance coverage.

(vi) Specify each requirement described in paragraph (a) of this section from which the plan sponsor elects to exempt the plan.

(vii) Certify that the person signing the election document, including (if applicable) a third party plan administrator, is legally authorized to do so by the plan sponsor.

(viii) Include, as an attachment, a copy of the notice described in paragraph (f) of this section.

(2) *''Term of the agreement'' defined.* Except as provided in paragraphs (b)(2)(i) and (b)(2)(ii), for purposes of

this section ''term of the agreement'' means all group health plan years governed by a single collective bargaining agreement.

(i) In the case of a group health plan for which the last plan year governed by a prior collective bargaining agreement expires during the bargaining process for a new agreement, the term of the prior agreement includes all plan years governed by the agreement plus the period of time that precedes the latest of the following dates, as applicable, with respect to the new agreement:

(A) The date of an agreement between the governmental employer and union officials.

(B) The date of ratification of an agreement between the governmental employer and the union.

(C) The date impasse resolution, arbitration or other closure of the collective bargaining process is finalized when agreement is not reached.

(ii) In the case of a group health plan governed by a collective bargaining agreement for which closure is not reached before the last plan year under the immediately preceding agreement expires, the term of the new agreement includes all plan years governed by the agreement excluding the period that precedes the latest applicable date specified in paragraph (b)(2)(i) of this section.

(3) *Construction.* (i) *Dispute resolution.* Nothing in paragraph (b)(1)(ii) of this section should be construed to mean that CMS arbitrates disputes between plan sponsors, participants, beneficiaries, or their representatives regarding whether an election complies with all of a plan sponsor's rules.

(ii) *Future elections not preempted.* If a plan must comply with one or more requirements of this part for a given plan year or period of plan coverage, nothing in this section should be construed as preventing a plan sponsor from submitting an election in accordance with this section for a subsequent plan year or period of plan coverage.

(c) *Mailing address.* The plan sponsor should mail the election to: Centers for Medicare & Medicaid Services, Private Health Insurance Group, CMSO, 7500 Security Boulevard, S3–16–16, Baltimore, MD 21244–1850.

(d) *Filing a timely election.* (1) *Plan not governed by collective bargaining.* Subject to paragraph (d)(4) of this section, if a plan is not governed by a collective bargaining agreement, a plan sponsor or entity acting on behalf of a plan sponsor must file an election with CMS before the first day of the plan year.

(2) *Plan governed by a collective bargaining agreement.* Subject to paragraph (d)(4) of this section, if a plan is governed by a collective bargaining agreement, a plan sponsor or entity acting on behalf of a plan sponsor must file an election with CMS before the first day of the first plan year governed by a collective bargaining agreement, or by the 45th day after the latest applicable date specified in paragraph (b)(2)(i) of this section, if the 45th day falls on or after the first day of the plan year.

(3) *Verifying timely filing.* CMS uses the postmark on the envelope in which the election is submitted to determine that the election is timely filed as specified under paragraphs (d)(1) or (d)(2) of this section, as applicable. If the latest filing date falls on a Saturday, Sunday, or a State or Federal holiday, CMS accepts a postmark on the next business day.

(4) *Filing extension based on good cause.* CMS may extend the deadlines specified in paragraphs (d)(1) and (d)(2) of this section for good cause if the plan substantially complies with the requirements of paragraph (f) of this section.

(5) *Failure to file a timely election.* Absent an extension under paragraph (d)(4) of this section, a plan sponsor's failure to file a timely election under paragraph (d)(1) or (d)(2) of this section makes the plan subject to all requirements of this part for the entire plan year to which the election would have applied, or, in the case of a plan governed by a collective bargaining agreement, for any plan years under the agreement for which the election is not timely filed.

(e) *Additional information required.* (1) *Written notification.* If an election is timely filed, but CMS determines that the election document (or the notice to plan enrollees) does not meet all of the requirements of this section, CMS may notify the plan sponsor, or other entity that filed the election, that it must submit any additional information that CMS has determined is necessary to meet those requirements. The additional information must be filed with CMS by the later of the following dates:

(i) The last day of the plan year.

(ii) The 45th day after the date of CMS's written notification requesting additional information.

(2) *Timely response.* CMS uses the postmark on the envelope in which the additional information is submitted to determine that the information is timely filed as specified under paragraph (e)(1) of this section. If the latest filing date falls on a Saturday, Sunday, or a State or Federal holiday, CMS accepts a postmark on the next business day.

(3) *Failure to respond timely.* CMS may invalidate an election if the plan sponsor, or other entity that filed the election, fails to timely submit the additional information as specified under paragraph (e)(1) of this section.

(f) *Notice to enrollees.* (1) *Mandatory notification.*

(i) A plan that makes the election described in this section must notify each affected enrollee of the election, and explain the consequences of the election. For purposes of this paragraph (f), if the dependent(s) of a participant reside(s) with the participant, a plan need only provide notice to the participant.

(ii) The notice must be in writing and, except as provided in paragraph (f)(2) of this section with regard to initial notices, must be provided to each enrollee at the time of enrollment under the plan, and on an annual basis no later than the last day of each plan year (as defined in § 144.103 of this subchapter) for which there is an election.

(iii) A plan may meet the notification requirements of this paragraph (f) by prominently printing the notice in a summary plan description, or equivalent description, that it provides to each enrollee at the time of enrollment, and annually. Also, when a plan provides a notice to an enrollee at the time of enrollment, that notice may serve as the initial annual notice for that enrollee.

(2) *Initial notices.* (i) If a plan is not governed by a collective bargaining agreement, with regard to the initial plan year to which an election under this section applies, the plan must provide the initial annual notice of the election to all enrollees before the first day of that plan year, and notice at the time of enrollment to all individuals who enroll during that plan year.

(ii) In the case of a collectively bargained plan (including a self-funded non-Federal governmental plan that has been exempted from requirements of this part under § 146.125(a)(2)), with regard to the initial plan year to which an election under this section applies, the plan must provide the initial annual notice of the election to all enrollees before the first day of the plan year, or within 30 days after the latest applicable date specified in paragraph (b)(2)(i) of this section if the 30th day falls on or after the first day of the plan year. Also, the plan must provide a notice at the time of enrollment to individuals who—

(A) Enroll on or after the first day of the plan year, when closure of the collective bargaining process is reached before the plan year begins; or

(B) Enroll on or after the latest applicable date specified in paragraph

(b)(2)(i) of this section if that date falls on or after the first day of the plan year.

(3) *Notice content.* The notice must include at least the following information:

(i) The specific requirements described in paragraph (a)(1) of this section from which the plan sponsor is electing to exempt the plan, and a statement that, in general, Federal law imposes these requirements upon group health plans.

(ii) A statement that Federal law gives the plan sponsor of a self-funded non-Federal governmental plan the right to exempt the plan in whole, or in part, from the listed requirements, and that the plan sponsor has elected to do so.

(iii) A statement identifying which parts of the plan are subject to the election.

(iv) A statement identifying which of the listed requirements, if any, apply under the terms of the plan, or as required by State law, without regard to an exemption under this section.

(v) A statement informing plan enrollees that the plan provides for certification and disclosure of creditable coverage for covered employees and their dependents who lose coverage under the plan.

(g) *Subsequent elections.* (1) *Election renewal.* A plan sponsor may renew an election under this section through subsequent elections. The timeliness standards described in paragraph (d) apply to election renewals under this paragraph (g).

(2) *Form and manner of renewal.* Except for the requirement to forward to CMS a copy of the notice to enrollees under paragraph (b)(1)(viii) of this section, the plan sponsor must comply with the election requirements of paragraph (b)(1) of this section. In lieu of providing a copy of the notice under (b)(1)(viii), the plan sponsor may include a statement that the notice has been, or will be, provided to enrollees as specified under paragraph (f) of this section.

(3) *Election renewal includes provisions from which plan not previously exempted.* If an election renewal includes a requirement described in paragraph (a) of this section from which the plan sponsor did not elect to exempt the plan for the preceding plan year, the advance notification requirements of paragraph (f)(2) of this section apply with respect to the additional requirement(s) of paragraph (a) from which the plan sponsor is electing to exempt the plan.

(4) *Special rules regarding renewal of an election under a collective bargaining agreement.* (i) If protracted negotiations with respect to a new agreement result in an extension of the term of the prior agreement (as provided under paragraph (b)(2)(i)) under which an election under this section was in effect, the plan must comply with the enrollee notification requirements of paragraph (f)(1), and, following closure of the collective bargaining process, must file an election renewal with CMS as provided under paragraph (d)(2) of this section.

(ii) If a single plan applies to more than one bargaining unit, and the plan is governed by collective bargaining agreements of varying lengths, paragraph (d)(2) of this section, with respect to an election renewal, applies to the plan as governed by the agreement that results in the earliest filing date.

(h) *Certification and disclosure of creditable coverage.* Without regard to an election under this section, a non-Federal governmental plan must provide for certification and disclosure of creditable coverage under the plan with respect to participants and their dependents as specified under § 146.115. CMS enforces this requirement as provided under paragraph (k) of this section.

(i) *Effect of failure to comply with certification and notification requirements.* (1) *Substantial failure.* (i) *General rule.* Except as provided in paragraph (i)(1)(iii) of this section, a substantial failure to comply with paragraphs (f) or (h) of this section results in the invalidation of an election under this section with respect to all plan enrollees for the entire plan year. That is, the plan is subject to all requirements of this part for the entire plan year to which the election otherwise would have applied.

(ii) *Determination of substantial failure.* CMS determines whether a plan has substantially failed to comply with a requirement of paragraph (f) or paragraph (h) of this section based on all relevant facts and circumstances, including previous record of compliance, gravity of the violation and whether a plan corrects the failure, as warranted, within 30 days of learning of the violation. However, in general, a plan's failure to provide a notice of the fact and consequences of an election under this section to an individual at the time of enrollment, or on an annual basis before a given plan year expires, constitutes a substantial failure.

(iii) *Exceptions.* (A) *Multiple employers.* If the plan is sponsored by multiple employers, and only certain employers substantially fail to comply with the requirements of paragraphs (f) or (h) of this section, then the election is invalidated with respect to those employers only, and not with respect to other employers that complied with those requirements, unless the plan chooses to cancel its election entirely.

(B) *Limited failure to provide notice.* If a substantial failure to notify enrollees of the fact and consequences of an election is limited to certain individuals, the election under this section is valid only if, for the plan year with respect to which the failure has occurred, the plan agrees not to apply the election with respect to the individuals who were not notified and so informs those individuals in writing.

(2) *Examples.* (i) *Example 1:* A self-funded non-Federal group health plan is co-sponsored by 10 school districts. Nine of the school districts have fully complied with the requirements of paragraph (f) of this section, including providing notice to new employees at the time of their enrollment in the plan, regarding the group health plan's exemption under this section from requirements of this part. One school district, which hired 10 new teachers during the summer for the upcoming school year, neglected to notify three of the new hires about the group health plan's exemption election at the time they enrolled in the plan. The school district has substantially failed to comply with a requirement of paragraph (f) with respect to these individuals.

The school district learned of the oversight six weeks into the school year, and promptly (within 30 days of learning of the oversight) provided notice to the three teachers regarding the plan's exemption under this section and that the exemption does not apply to them, or their dependents, during the plan year of their enrollment because of the plan's failure to timely notify them of its exemption. The plan complies with the requirements of this part for these individuals for the plan year of their enrollment. CMS would not require the plan to come into compliance with the requirements of this part for other enrollees.

(ii) *Example 2:* Same facts as in Example 1, except the noncompliant school district failed to notify any enrollees regarding an election under this section. That is, the school district failed to provide the annual notice to current plan enrollees as well as the notice at the time of enrollment to new enrollees. The school district has substantially failed to comply with the requirements of paragraph (f) of this section. At a minimum, the election is invalidated with respect to all enrollees of the noncompliant school district for the plan year for which the substantial failure has occurred. In this example, the plan decides not to cancel its election entirely. The election with regard to the other nine school districts remains in effect.

(iii) *Example 3.* Two non-Federal governmental employers cosponsor a self-funded group health plan. One employer substantially fails to comply with the requirements of paragraph (f) of this section. While the plan may limit the invalidation of the election to enrollees of the plan sponsor that is responsible for the substantial failure,

the plan sponsors determine that administering the plan in that manner would be too burdensome. Accordingly, in this example, the plan sponsors choose to cancel the election entirely. Both plan sponsors come into compliance with the requirements of this part with respect to all enrollees for the plan year for which the substantial failure has occurred.

(iv) *Example 4:* A non-Federal governmental employer has elected to exempt its collectively bargained self-funded plan from certain requirements of this part. The collective bargaining agreement applies to five plan years, 2001 through 2005. For the first three plan years, enrollees are notified annually and at the time of enrollment of the election under this section. The notice specifies that the election applies to the period January 1, 2001 through December 31, 2005. Prior to the dissemination of the annual notice for the 2004 plan year, the individual responsible for disseminating the notice terminates employment. His replacement, who is unaware of the requirement that plan enrollees be notified annually, continues to notify new enrollees at the time of enrollment but fails to disseminate the annual notice. CMS does not consider that failure to be a substantial failure because enrollees previously had actual notice that the election under this section applies for the period January 1, 2001 through December 31, 2005. Accordingly, CMS would not invalidate the election for the 2004 plan year.

(v) *Example 5:* A non-Federal governmental employer has elected to exempt its self-funded plan from certain requirements of this part. An individual terminates employment with the governmental employer, which fails to automatically provide a certificate of creditable coverage within the period specified in § 146.115(a)(2)(ii)(A). (The governmental employer generally provides certificates to terminated employees on an automatic basis, but neglected to do so in this case.) The oversight is brought to the employer's attention when the individual inquires as to why he has not received his certificate of creditable coverage. The governmental employer promptly (within 30 days) forwards a certificate to the individual. CMS would not view that situation as constituting a substantial failure and would not invalidate the election under this section.

(j) *Election invalidated.* If CMS finds cause to invalidate an election under this section, the following rules apply:

(1) CMS notifies the plan sponsor (and the plan administrator if other than the plan sponsor and the administrator's address is known to CMS) in writing that CMS has made a preliminary determination that an election is invalid, and states the basis for that determination.

(2) CMS's notice informs the plan sponsor that it has 45 days after the date of CMS's notice to explain in writing why it believes its election is valid. The plan sponsor should provide applicable statutory and regulatory citations to support its position.

(3) CMS verifies that the plan sponsor's response is timely filed as provided under paragraph (d)(3) of this section. CMS will not consider a response that is not timely filed.

(4) If CMS's preliminary determination that an election is invalid remains unchanged after CMS considers the plan sponsor's timely response (or in the event that the plan sponsor fails to respond timely), CMS provides written notice to the plan sponsor (and the plan administrator if other than the plan sponsor and the administrator's address is known to CMS) of CMS's final determination that the election is invalid. Also, CMS informs the plan sponsor that, within 45 days of the date of the notice of final determination, the plan, subject to paragraph (i)(1)(iii) of this section, must comply with all requirements of this part for the specified period for which CMS has determined the election to be invalid.

(k) *Enforcement.* To the extent that an election under this section has not been filed or a non-Federal governmental plan otherwise is subject to one or more requirements of this part, CMS enforces those requirements under part 150 of this subchapter. This may include imposing a civil money penalty against the plan or the plan sponsor, as determined under § 150.305.

(l) *Construction.* Nothing in this section should be construed to prevent a State from taking the following actions:

(1) Establishing, and enforcing compliance with, the requirements of State law (as defined in § 146.143(d)(1)), including requirements that parallel provisions of title XXVII of the PHS Act, that apply to non-Federal governmental plans or sponsors.

(2) Prohibiting a sponsor of a non-Federal governmental plan within the State from making an election under this section.

(Catalog of Federal Domestic Assistance Program No. 93.773), (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 7, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: March 20, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–17621 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule adopts with changes the interim rule published in the **Federal Register** on July 12, 2001. The interim rule amended the NASA FAR Supplement (NFS) to clarify information technology (IT) security requirements for sensitive information contained in unclassified automated information resources

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Karl Beisel, NASA Headquarters, Code HC, Washington, DC 20546, (202) 358–0416, *kbeisel@mail.hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA published an interim rule in the **Federal Register** at 66 FR 36490 on July 12, 2001, revising NFS section 1804.470 and the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources. These sections address security requirements for unclassified IT resources. The action implemented The Computer Security Act of 1987 and Appendix III of the Office of Management and Budget (OMB) Circular No. A–130, Security of Federal Automated Information Resources, which require adequate security be provided for all Agency information collected, processed, transmitted, stored, or disseminated. NFS section 1804.470 contains the requirement for all NASA contractors and subcontractors to comply with Federal and NASA policies in safeguarding unclassified NASA data held via information technology (IT).

Public comments were received from one source. The comments were considered in developing this final rule.

Changes are made in this final rule to section 1804.470–1, Scope, to reference Federal policies that are implemented through NASA's Procedures and Guidelines (NPG) 2810.1, Security of Information Technology, and amend paragraph (d)(3)(i) of the clause at 1852.204–76 to remove the exemption of certain information contained in Standard Form 85P, Questionnaire for Public Trust Positions.

NASA understands that the FAR Council is working with the OMB

Committee on Executive Branch Information Systems Security under the President's Critical Infrastructure Protection Board on the development of a government-wide IT security clause. The purpose of this work is to ensure that IT security requirements are included in all applicable Federal government contracts. Upon completion of this government-wide effort, NASA will modify its rule, as may be necessary, to ensure consistency with the FAR coverage.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because this rule only clarifies existing requirements and does not impose any new requirements.

C. Paperwork Reduction Act

This rule clarifies existing requirements that were previously approved by the Office of Management and Budget (OMB) under OMB Control No. 2700–0098.

List of Subjects in 48 CFR Parts 1804 and 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Interim Rule Adopted as Final With Change

Accordingly, the interim rule amending 48 CFR parts 1804 and 1852, published at 66 FR 36492 on July 12, 2001, is adopted as final with the following changes:

1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Revise section 1804.470–1 to read as follows:

1804.470–1 Scope.

This section implements NASA's acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources. Federal policies include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*), the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 *et seq.*), Public Law 106–398, section 1061, Government Information Security Reform, OMB Circular A–130, Management of Federal Information Resources, and the National Institute of Standards and Technology security guidance and standards.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204–76 [Amended]

3. Amend section 1852.204–76 in the clause heading by removing ''(JULY 2001)'' and adding ''(July 2002)'' in its place; and in paragraph (d)(3)(i) by removing ''(Information regarding financial record, question 22, and the Authorization for Release of Medical Information are not applicable)''.

[FR Doc. 02–19004 Filed 7–25–02; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 67, No. 144
Friday, July 26, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–02–002]

RIN 0581–AC10

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the fees and charges for Federal voluntary egg, poultry, and rabbit grading. These fees and charges need to be increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

DATES: Comments must be received on or before August 26, 2002.

ADDRESSES: Send written comments to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, Room 3944-South, 1400 Independence Avenue, SW., Washington, DC 20250. Comments may be faxed to (202) 690–0941.

State that your comments refer to Docket No. PY–02–002 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*) authorizes official voluntary grading and certification on a user-fee basis of eggs, poultry, and rabbits. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered. The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable.

A recent review determined that the existing fee schedule, effective January 1, 2002, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2003. Costs in FY 2003 are projected at $27.2 million. Without a fee increase, FY 2003 revenues are projected at $26.0 million and trust fund balances would be $15.2 million. With a fee increase, FY 2003 revenues are projected at $27.2 million and trust fund balances would remain at $16.4 million.

Employee salaries and benefits account for approximately 82 percent of the total operating budget. The last general and locality salary increase for Federal employees became effective on January 1, 2002 and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 3.6 percent, however, the increase was actually 4.52 to 5.42 percent, depending on locality. Another general and locality salary increase estimated at 2.6 percent is expected in January 2003. Also, from October 2001 through September 2003, salaries and fringe benefits of federally-licensed State employees will have increased by about 6 percent.

The impact of these cost increases was determined for resident, nonresident, and fee services. To offset projected cost increases, the hourly resident and nonresident rate would be increased by approximately 5.8 percent and the fee rate would be increased by approximately 6 percent. The hourly rate for resident and nonresident service covers graders' salaries and benefits. The hourly rate for fee service covers graders' salaries and benefits, plus the cost of travel and supervision.

Administrative charges that cover the cost of supervision for resident poultry and shell egg grading would also be increased as shown in the table below. Administrative charges for resident rabbit grading and nonresident services would not be changed.

The following table compares current fees and charges with proposed fees and charges for egg, poultry, and rabbit grading as found in 7 CFR parts 56 and 70:

Service	Current	Proposed
Resident Service (egg, poultry, rabbit grading)		
Inauguration of service	310	310
Hourly charges:		
Regular hours	31.52	33.36
Administrative charges—Poultry grading:		
Per pound of poultry	.00036	.00037
Minimum per month	250	260
Maximum per month	2,650	2,675
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs	.046	.048
Minimum per month	250	260
Maximum per month	2,650	2,675
Administrative charges—Rabbit grading:		
Based on 25% of grader's salary, minimum per month	260	260
Nonresident Service (egg, poultry grading)		
Hourly charges:		

Service	Current	Proposed
Regular hours	31.52	33.36
Administrative charges:		
Based on 25 % of grader's salary, minimum per month	260	260
Fee and Appeal Service (egg, poultry, rabbit grading)		
Hourly charges:		
Regular hours	54.40	57.68
Weekend and holiday hours	62.76	66.64

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

There are about 400 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if fees are adequate and if costs are reasonable. A recent review determined that the existing fee schedule, effective January 1, 2002, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2003. Costs in FY 2003 are projected at $27.2 million. Without a fee increase, FY 2003 revenues are projected at $26.0 million and trust fund balances would be $15.2 million. With a fee increase, FY 2003 revenues are projected at $27.2 million and trust fund balances would remain at 16.4 million.

This action would raise the fees charged to users of grading services. The AMS estimates that overall, this rule would yield an additional $1.2 million during FY 2003. The hourly rate for resident and nonresident service would increase by approximately 5.8 percent and the fee rate would increase by approximately 6 percent. The impact of these rate changes in a poultry plant would range from less than 0.007 to 0.037 cents per pound of poultry handled. In a shell egg plant, the range would be less than 0.021 to 0.036 cents per dozen eggs handled.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

A 30-day comment period is provided for interested persons to comment on this proposed rule. This period is appropriate in order to implement, as early as possible in FY 2003, any fee changes adopted as a result of this rulemaking action.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that Title 7, Code of Federal Regulations, parts 56 and 70 be amended as follows:

PART 56—GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 56.46 is revised to read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $57.68 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $66.64 per hour. Information on legal holidays is available from the Supervisor.

3. In § 56.52, paragraph (a)(4) is revised to read as follows:

§ 56.52 Continuous grading performed on resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.048, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

4. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

5. Section 70.71 is revised to read as follows:

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $57.68 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $66.64 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00037, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18922 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 2198–02; AG Order No. 2603–2002]

RIN 1115–AG61

Address Notification To Be Filed With Designated Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations of the Immigration and Naturalization Service (Service) by requiring every alien who is applying for immigration benefits to acknowledge having received notice that he or she is required to provide a valid current address to the Service, including any change of address within 10 days of the change; that the Service will use the most recent address provided by the alien for all purposes, including the service of a Notice to Appear if the Service initiates removal proceedings; and, if the alien has changed address and failed to provide the new address to the Service, that the alien will be held responsible for any communications sent to the most recent address provided by the alien. This rule will satisfy the requirements for advance notice to the alien of the obligation to provide a current address to the Service, and of the consequences that may result for failure to do so, including the entry of an *in absentia* removal order against the alien if the alien fails to appear at a removal hearing.

DATES: Written comments must be submitted on or before August 26, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division (HQRFS), Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling please reference INS No. 2198–02 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov.* When submitting comments electronically, please include INS No. 2198–02 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Barry O'Melinn, Chief Appellate Counsel, 5113 Leesburg Pike, Room 200, Falls Church, Virginia 22041, (703) 756–6257.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 8 CFR 103.2 by adding a new paragraph that requires aliens to acknowledge having received notice of the existing statutory obligation to keep the Service informed of their current address, and that, if they change address and fail to provide notice of the change of address to the Service, they will be held responsible for all communications sent to the most recent address provided by the alien.

The proposed rule will assist aliens who apply for benefits to ensure that the Service will be able to contact them with respect to any issues relating to their applications for benefits, which may include requests by the Service for additional information or for the aliens to appear for an interview in connection with the applications. An alien who fails to respond to such communications from the Service may lose substantial rights, because the Service will deem the alien to have abandoned the application and deny it. *See* 8 CFR 103.2(b)(13).

The changes made by the proposed rule will also make clear to the alien that, should it ever become necessary for the Service to place the alien in removal proceedings, the Service will be able to effectuate service of the Notice to Appear, Form I–862, by mailing it to the most recent address provided by the alien for purposes of removal proceedings, as provided in section 239(c) of the Act, and that, if the alien fails to appear at a scheduled hearing, after notice of the hearing was sent to the most recent address provided by the alien, the alien is subject to being ordered removed *in absentia.* This rule is intended to avoid the kind of factual circumstances that gave rise to the decision by the Board of Immigration Appeals (Board) in *Matter of G–Y–R–,* 23 I&N Dec. 181 (BIA 2001), which concluded that an *in absentia* order cannot be entered against an alien who failed to appear at removal proceedings where the alien had not provided a new address in the last five years and the Service knew that the alien did not receive the Notice to Appear because it was returned by the Postal Service as undeliverable.

Why Is It Necessary To Add Mandatory Acknowledgments to Service Forms?

The Board's decision in *Matter of G–Y–R–* focused on the issue of constructive notice of the initiation of removal proceedings, in a case where the Service knew that the subject alien did not actually receive the Notice to Appear because it was returned by the Postal Service as undeliverable. In that circumstance, the Board held that an *in absentia* order of removal is inappropriate, because the record reflected that the alien did not actually receive, and could not be charged with receiving, the Notice to Appear informing the alien of the statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address. Under the present law and regulations, as construed by the Board, an alien cannot be charged with

having been advised of the obligation to provide a current address for purposes of removal proceedings, and of the associated penalties for failing to do so, until he or she is served with the Notice to Appear, which (under the current practice) is the first document that sets forth those specific notifications. The Board therefore concluded that it could not sustain an *in absentia* order of removal, unless the alien could properly be charged with having received the Notice of Appear and thus having received these warnings.

The Board based its reasoning on a reading of section 239(a) and (c) of the Act, 8 U.S.C. 1229(a) and (c), in conjunction with section 240(b)(5) of the Act, 8 U.S.C. 1229a(b)(5). The Board determined that these provisions were interrelated, and collectively precluded the entry of an *in absentia* order of removal when the alien had not received the Notice to Appear and thus did not know of the particular address obligations associated with removal proceedings. Specifically, the Board noted that section 239(a)(1)(F) of the Act mandates that the Notice to Appear apprise the alien of the particular address obligation respecting removal proceedings and also warn the alien of the potential for an *in absentia* order if the alien fails to provide address information as instructed by the Notice to Appear.

The Board read the *in absentia* provisions in section 240(b)(5)(A) of the Act, in conjunction with section 239(a)(1)(F) of the Act, to find that an alien does not provide a ''section 239(a)(1)(F)'' address (or ''have provided'' it and therefore not need to change it) unless the alien had been advised to do so. The Board noted that such a conclusion was reinforced by the language of section 239(c) of the Act, which permits service by mail when the address used is ''provided by the alien in accordance with subsection (a)(1)(F).'' The Board also observed that nothing in the existing regulations provides for a different result.

As noted by the dissent in *Matter of G–Y–R–,* however, this interpretation creates a quandary for the Service in those situations in which it must resort to service of a Notice to Appear by regular mail, which is expressly authorized by section 239(c) of the Act. Specifically, the Notice to Appear not only furnishes notice of the hearing, but also provides the required information pertaining to an alien's statutory address obligations and the consequences of failing to comply. Accordingly, an address to which the Service sends a Notice to Appear might be insufficient for purposes of *in absentia* hearings if the alien fails to appear for the scheduled hearing, unless the alien has actual knowledge of the advisories and is actually on notice of the consequences of a failure to provide a current address and a failure to appear at a removal hearing.

The Service acknowledges the importance of providing advance notice to aliens, as discussed in *Matter of G–Y–R–*. However, there is nothing in the existing law that would prevent the Service from providing such notice to aliens even *before* the service of a Notice to Appear. Indeed, section 239(a)(1)(F)—establishing the ''requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting removal proceedings''—expressly contemplates that the alien might already ''have provided'' written notice of an address for purposes of removal proceedings even before receiving that notification in the Notice to Appear. Thus, more than one federal court of appeals has concluded without hesitation that ''[t]he statute clearly provides that notice to the alien at the most recent address provided by the alien is sufficient notice, and that there can be an *in absentia* removal after such notice.'' *Dominguez* v. *United States Attorney General,* 284 F.3d 1258, 1260 (11th Cir. 2002); *see also Al-Rawahneh* v. *INS,* No. 00–4447, 2002 WL 1021866 (6th Cir. May 17, 2002) (following *Dominguez*); *Sabaileh* v. INS, 3 Fed. Appx. 521, 523 (7th Cir. 2001) (concluding that mailed service to the alien's ''last known address'' was sufficient under the materially identical prior version of the statute, because the alien ''failed to promptly notify the INS of the change in his address, despite having been expressly warned of his responsibility to do so'').

Accordingly, in order to ameliorate the practical difficulties that the decision in *Matter of G–Y–R–* poses for both aliens and the Service, this proposed rule will change the substance of the regulations and the notifications provided to aliens. As revised, the relevant forms will provide advance notice of the obligation to provide a current address that may be used by the Service for purposes of removal proceedings, and also of the consequences of the failure to provide such an address, in light of the Board's discussion of the issues in *Matter of G–Y–R–*.

Under this proposed rule, the Service will have the means to ensure that aliens who apply for immigration benefits will have received actual, advance notice of their statutory obligation to provide a current address to the Attorney General, including notice that the most recent address provided by the alien can be used for purposes of removal proceedings (should such proceedings ever be initiated), and the consequences of failing to provide a current address, even before the issuance of a Notice to Appear. The address provided by an alien on an application for benefits under the Act will be used by the Service for all purposes, including requests for additional information in considering the application, providing a final decision on the application, and any other communication, such as forwarding a Notice to Appear, if removal proceedings are instituted.

Specifically, the Service will amend the various application forms for immigration benefits, as well as Form AR–11 (Alien's Change of Address Card), to require that an alien must provide the Service with his or her current address, and to contain an express acknowledgment by the applicant that he or she has read and is aware of the obligation to provide the Service with notice of change of address within 10 days of such a change, and is aware that the Service may send written communications to the most recent address provided by the alien for all purposes, including removal proceedings. Finally, the amended forms will advise that an alien who changes address and fails to provide a current address to the Service will be held accountable for all written communications sent to the most recent address provided by the alien, which may include a Notice to Appear and a notice of scheduled immigration hearings. Accordingly, such an alien can properly be charged with having received the necessary notice, and may properly be ordered removed *in absentia* in accordance with section 240(b)(5) of the Act and 8 CFR 3.26, if he or she fails to appear at a scheduled hearing.

What Are an Alien's Obligations To Provide an Address to the Service?

Section 262(a) of the Act requires that virtually every alien over the age of 14 who remains in the United States for more than 30 days must register with the Service. Section 265(a) of the Act requires that every alien who is required to register must provide the Attorney General with each change of address and new address within 10 days from the date of such change of address.

What Are the Consequences of Not Registering or Filing a Change of Address?

A willful failure to register with the Service is punishable by imprisonment for not more than 6 months and a fine of not more than $1,000, or both, under section 266(a) of the Act. Section 266(b) of the Act provides that an alien who fails to give written notice of a change of address may be fined not to exceed $200, or imprisoned for not more than 30 days, or both. This section also provides that the alien shall be taken into custody and removed from the United States through removal proceedings.

Failure to file a change of address may also put the alien at risk of being placed in removal proceedings and ordered removed *in absentia* under section 240(b)(5) of the Act if the alien fails to appear at a scheduled hearing.

What Forms Will Be Affected?

This rule will require amendments to a number of forms, and the Service will be implementing this rule by amending each form as soon as practicable. Once each form is revised and made available for public use, the Service will require that all aliens use the revised version.

Specifically, the Service intends to place the requisite notices and warnings on all relevant forms, including, but not limited to: Form AR–11 (Alien's Change of Address Card); Form I–131 (Application for Travel Document); Form I–191 (Application for Advance Permission to Return to Unrelinquished Domicile); Form I–192 (Application for Advance Permission to Enter as Nonimmigrant); Form I–193 (Application for Waiver of Passport and/or Visa); Form I–212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal); Form I–290B (Notice of Appeal to the Administrative Appeals Unit (AAU)); Form I–360 (Petition for Amerasian, Widow(er), or Special Immigrant); Form I–485 (Application to Register Permanent Residence or Adjust Status) and supplements (except when used to apply for LIFE legalization); Form I–539 (Application to Extend/Change Nonimmigrant Status) and supplement A (Filing Instructions for V Nonimmigrant Status); Form I–589 (Application for Asylum and Withholding of Removal); Form I–601 (Application for Waiver of Grounds of Excludability); Form I–602 (Application by Refugee for Waiver on Grounds of Excludability); Form I–694 (Notice of Appeal of Decision under section 210 or 245A of the Immigration and Nationality Act); Form I–730 (Refugee/Asylee Relative Petition); Form I–751 (Petition to Remove Conditions on Residence); Form I–765 (Application for Employment Authorization); Form I–817 (Application for Family Unity Benefits); Form I–821 (Application for Temporary Protected Status); Form I–823 (Application—Alternative Inspection Services); Form I–824 (Application for Action on an Approved Application or Petition); Form I–829 (Petition by Entrepreneur to Remove Conditions); Form I–855 (ABC Change of Address Form); Form I–866 (Application'Checkpoint Pre-enrolled Access Lane); Form I–881 (Application for Suspension of Deportation or Special Rule Cancellation of Removal); Form I–914 (Application for T Nonimmigrant Status); Form N–300 (Application to File Declaration of Intention); Form N–400 (Application for Naturalization); Form N–410 (Motion for Amendment of Petition (application)); Form N–455 (Application for Transfer of Petition for Naturalization); Form N–470 (Application to Preserve Residence for Naturalization Purpose); Form N–600 (Application for Certification of Citizenship); and Form N–644 (Application for Posthumous Citizenship).

What Are the Consequences of Failure To Make the Acknowledgments With the Designated Application Forms?

Once each benefit form is revised, the mandatory address notification and acknowledgments will become a part of the application process itself and will be made when the alien signs the application form. If the alien does not sign the form, and thus does not make the required acknowledgments, the Service will reject the form as improperly filed pursuant to 8 CFR 103.2(a)(7)(i).

How Will This Assist Aliens in Acquiring Benefits and Avoiding Adverse Consequences?

This proposed rule will provide a mechanism for ensuring that each alien applying for an immigration benefit has actual notice of the requirement to provide a change of address. Without a proper address on file at all times, an alien cannot respond to requests from the Service for additional information or to appear for an interview, or receive benefits in a timely fashion. Similarly, without a proper address on file at all times, if it becomes necessary to initiate proceedings before an immigration judge, the alien will not be able to receive a timely notice of the hearing. Although the Service will be able to send notice of the proceedings to the most recent address provided by the alien, an alien who has changed address and failed to provide a current address may fail to receive the notices and, accordingly, could be ordered removed *in absentia* without an opportunity to defend against the charges or to seek relief if the alien fails to appear at a scheduled hearing. Providing a mechanism that helps ensure that the Service has a current address for the alien also helps the alien by assuring that he or she will have the opportunity to see that his or her rights are adequately protected—including having the opportunity to present his or her views before an immigration judge and to seek any available relief during removal proceedings.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule adds a new requirement that an alien acknowledge, at the time certain forms are filed with the Service, that he or she has received notice of the obligation to keep the Service informed of his or her current address, including any changes of address, and of the consequences that may result for failure to do so. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

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, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

This rule requires the revision of several Service forms to ensure that the Service has an accurate address for the alien. The forms being revised are public use forms covered under the Paperwork Reduction Act. Accordingly, these forms will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Aliens, Immigration, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Accordingly, the Department of Justice proposes to amend 8 CFR chapter I as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1229, 1229a, 1252 note, 1252b, 1304, 1305, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166, 8 CFR part 2.

2. Add new paragraph (a)(8) to § 103.2 to read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) * * *

(8) *Acknowledgment of consequences of failure to provide current address information.* (i) Forms published by the Service for use by aliens who are applying for an immigration benefit or work authorization from the Service, as well as Form AR–11 (Alien's Change of Address Card), will contain a mandatory address notification, on the face of the form above the alien's signature, by which the alien acknowledges having received notice that:

(A) He or she is required to provide a valid current address to the Service, including any change of address within 10 days of the change;

(B) The Service will use the most recent address provided by the alien for all purposes, including for purposes of removal proceedings under sections 239 and 240 of the Act should it ever be necessary for the Service to initiate removal proceedings;

(C) If the alien has changed address and failed to provide the new address to the Service, the alien will be held responsible for any communications sent to the most recent address provided by the alien; and

(D) If the alien fails to appear at any scheduled immigration hearing after notice of the hearing was mailed to the most recent address provided by the alien, or as otherwise provided by law, the alien is subject to being ordered removed in absentia.

(ii) An alien who submits an application, petition, appeal, motion, or other document that includes the mandatory address notification in paragraph (a)(8)(i) of this seciton acknowledges that the alien is providing an address to the Service for all purposes, including the service of a Notice to Appear, if such service becomes necessary, under sections 239(a)(1)(F), 239(c), and 240(b)(5) of the Act, and 8 CFR 3.26.

* * * * *

Dated: July 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–18896 Filed 7–25–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 657

[FHWA Docket No. FHWA–97–2219; 93–28]

RIN 2125–AC60

State Certification of Size and Weight Enforcement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Termination of proposed rulemaking.

SUMMARY: This document terminates a rulemaking proceeding to amend the Federal Highway Administration (FHWA) regulation covering State certification of size and weight enforcement of commercial motor vehicles. The agency initiated this action to consider revising the criteria for determining State compliance with existing Federal requirement for an annual certification of State size and weight enforcement. Recently, however, the National Research Council of the Transportation Research Board (TRB) issued a congressionally mandated report that, among other things, recommended revised Federal weight standards and further recommended additional study be undertaken of ways to improve enforcement of truck weight laws. The recommendations of the TRB report provide a basis for a broader review of the Federal and State truck size and weight programs. In light of this situation, we are terminating this rulemaking action and closing the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Davis, Office of Freight Management and Operations (202) 366–2997, 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.

Background

Since 1975, States have been required under 23 U.S.C. 141, to certify annually that they are enforcing their laws respecting maximum vehicle size and weight in order to receive their full entitlement of Federal-aid highway funds. Regulatory implementation of section 141 is found at 23 CFR Part 657, Certification of Size and Weight Enforcement. Except for technical corrections necessitated by statutory changes, the current content of part 657 has remained unchanged since

publication in the **Federal Register** on August 7, 1980, at 45 FR 52365.

Since that time the motor carrier industry as well as State enforcement efforts have undergone substantial change. Recognizing these changes, the Federal Highway Administration published an advance notice of proposed rulemaking (ANPRM) [58 FR 65830, December 16, 1993], as the first step in revising and updating the requirements of part 657.

In June 1994, as the FHWA began review and consideration of the comments received, then Federal Highway Administrator Rodney Slater committed the FHWA to a comprehensive review of all aspects of the truck size and weight issue. Since the Agency was now committed to a comprehensive review of truck size and weight issues, it decided to postpone further action on this rulemaking until the comprehensive study could review existing issues. When the study was at the point where it was clear that it would not contain any recommendations in the area of enforcement certification, the Agency resumed work on this effort.

On September 28, 2000, at 65 FR 58233, the FHWA issued a supplemental advance notice of proposed rulemaking (SANPRM), asking for comments on a number of issues affecting the way in which State size and weight enforcement programs are certified. Most of the issues raised were the same as those discussed in the 1993 ANPRM. The objective was to update information on State programs, provide an opportunity for respondents to the SANPRM to review the validity of the earlier comments, and give interested parties the opportunity to present new ideas, concepts, and information that they believe the FHWA should consider in revising the certification process. The SANPRM posed 11 questions on various topics dealing with State certification of size and weight program activities, including: Possible data system needs; standardization of practices concerning scale tolerances, fees, fines, and staff training; application of technologies; and specific treatment of special vehicle types.

Just as the FHWA was to issue an NPRM, the National Research Council of the Transportation Research Board (TRB) provided to Congress its Special Report 267, ''Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicles.'' [1] This report describes a number of potential actions that public and private sector officials may wish to consider. These include ''organizational arrangements'' that would promote the reforming of Federal size and weight regulations affecting commercial motor vehicles, as well as regulatory and managerial changes intended to both improve the efficiency of truck transportation and reduce the public cost of truck traffic.

Discussion of Comments to the SANPRM

Thirty-four interested parties submitted written comments to the SANPRM: a bi-partisan delegation from the U.S. Congress; 12 State departments of transportation; 6 State enforcement agencies; 2 county sheriff's departments; 1 State law enforcement association; 1 county commissioner; one city council; 3 highway safety advocacy groups [includes the Commercial Vehicle Safety Alliance (CVSA)]; 3 representatives of national and State automobile organizations; 2 representatives of national and State trucking organizations; an interstate truck driver; and 1 trucking equipment manufacturer association.

There was a distinct divergence of positions among the respondents on almost all issues, with the exception being the almost universal consensus that size and weight enforcement is indeed an integral part of commercial vehicle safety programs, in addition to its traditional infrastructure preservation focus, and should be formally recognized and supported as such. As the American Automobile Association (AAA) noted in its response, public safety, as well as infrastructure preservation, must be considered in the regulation of commercial vehicle size and weight. Some respondents supported more aggressive State size and weight enforcement, standardization of enforcement requirements among the States, improved tracking of permit operations and expanded application of data systems to determine wear and tear associated with legal and illegal overweight vehicle operations, elimination of multi-trip permits, greater fines, and greater application of resources to enforcement efforts. Others were somewhat less demanding of change. They suggested one of two choices based on their experience: either the current certification and enforcement process is generally effective in monitoring overweight operations and therefore needs minimal or no alteration, or that it could be improved by increased Federal funding of State operations and greater Federal assistance in providing ''best practices'' to State and local enforcement officials. The specifics of these opinions are detailed below.

General Comments by Respondents

In addition to addressing the 11 questions posed in the SANPRM, respondents also submitted general comments about the current practices and needs of State size and weight enforcement programs. A significant concern, expressed by a number of respondents, is the result of an unintended consequence of Federal laws on truck size and weight. According to respondents, the fact that Federal weight law applies only on Interstate highways,[2] with Federal size laws applying on the National Network (NN),[3] has resulted in an unintended diversion of overweight violators onto non-Interstate and often non-NN State and local highways. These alternative roadways are inherently less safe, are made more so by the violators' passage, and are more vulnerable to structural damage than the major systems being avoided. Greater Federal support of mobile enforcement efforts, including State use of mobile scales and electronic weighing, was therefore advocated to reduce by-pass efforts by overweight operators.

The current FHWA certification program was directly criticized by both members of a bipartisan U.S. House of Representatives group opposed to truck size and weight increases, and by the Advocates for Highway and Auto Safety (AHAS). The congressional group expressed concern about inadequate Federal oversight of State programs. The congressional delegation called for ''new and effective systems for ensuring that State permitting practices are not used as a means of circumventing Federal standards' and thereby permit ''back door'' increases in vehicle weight. The AHAS criticized the rulemaking effort itself as a ''dilatory treatment'' of present day commercial vehicle safety

[1] Transportation Research Board, ''Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicles,'' June 2002, National Research Council, Special Report 267. Available online at *http://www.nationalacademies.org/trb/onlinepubs.nsf.*

[2] Interstate highways are defined in 23 U.S.C. 103, as a series of highways designed to connect America's ''principal metropolitan areas, cities and industrial centers'' and ''serve the national defense.''

[3] The National Network is defined under 23 CFR Part 658, ''Truck Size and Weight, Route Designations ''Length, Width and Weight Limitations,'' as the composite of the individual network of highways from each State on which vehicles authorized by the provisions of the Surface Transportation Assistance Act of 1982 are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under Section 658.11(f) or deleted under Section 653.11(d), and those portions of the Federal-aid Primary System in existence on June 1, 1991, as set out by the FHWA in Appendix A of Part 658.

issues, calling it another delay in response to repeated congressional calls for reliable information about the effects of commercial vehicles on road safety and infrastructure.

Other respondents posed differing comments, typically addressing general policy concerns, as the following: (1) The overall need to strengthen certification requirements; (2) the appropriateness of current road tax structures, calling overweight vehicles' failure to pay their fair share for the damage they do ''fundamentally unfair'; (3) the need for Federal funds to support ''best practices,'' new technologies, and new data systems for State usage in monitoring overweight vehicle operations; (4) the need for flexibility in enforcement plans, in order to help States develop workable strategies that best meet individual State's needs; (5) the necessity of weighing all vehicles, including those vehicles now using technologies that allow by-passing of way stations; and (6) perhaps conversely, the need for procedures that help identify and capture the true violator without requiring that every commercial vehicle be stopped and weighed.

In June 2002, the TRB provided to Congress its mandated report on commercial vehicle truck size and weight, ''Special Report 267, Regulation of Weights, Lengths, and Widths of Commercial Motor Vehicles.'' In it, the TRB called on the Congress to create an independent public organization to lead a broad-ranging program of research and assessment of current truck size and weight regulation; facilitate and support extensive evaluations of changes effected through State-conducted, federally supervised pilot programs and permit initiatives; and recommend regulatory changes to the Secretary of Transportation. The FHWA believes that the significant scope of the program changes proposed in the report and their possible ramifications overshadows the need for publication of the NPRM at this time. The FHWA may address the issue of revising truck size and weight enforcement regulations at a later date once the TRB report has been reviewed and acted upon.

Conclusion

For the reasons stated above, the FHWA is terminating this rulemaking and closing the docket.

Authority: Sec. 123, Pub. L. 95–599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 U.S.C. 31111–31114; sec. 1023, Pub. L. 102–240, l05 Stat. 1914; and 49 CFR 1.48 (b) (19), (b) (23), (c) (1), and (c) (19).

Issued on: July 22, 2002.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–18907 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–106876–00]

RIN 1545–AY24

Revision of Income Tax Regulations Under Sections 897, 1445, and 6109 To Require Use of Taxpayer Identifying Numbers on Submissions Under the Section 897 and 1445 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations to require the use of taxpayer identifying numbers on submissions under sections 897 and 1445. The proposed regulations are necessary to properly identify foreign taxpayers for which submissions are made for the reduction or elimination of tax under sections 897 and 1445. The proposed regulations also address miscellaneous items, such as the amendment to section 1445(e)(3) under the Small Business Job Protection Act of 1996. This document also provides notice of a public hearing on these proposed regulations.

DATES: Electronic or written comments and requests to speak (with outlines of oral comments) at the public hearing scheduled for November 13, 2002, must be submitted by October 23, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–106876–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–106876–00), 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.* The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Robert W. Lorence, (202) 622–3860; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S; Washington, DC 20224. Comments on the collections of information should be received by September 24, 2002.

The collections of information in this proposed regulation are in §§ 1.1445–2(d)(2) and 1.1445–3. The collections of information relate to the requirement that notices of nonrecognition or applications for withholding certificates be filed with the IRS with respect to (1) dispositions of U.S. real property interests that have been used by foreign persons as a principal residence within the prior 5 years and excluded from gross income under section 121 and (2) dispositions of U.S. real property interests by foreign persons in deferred like kind exchanges that qualify for nonrecognition under section 1031. This collection of information is necessary for the proper performance of the functions of the IRS because it notifies the IRS of dispositions of U.S. real property interests by foreign persons that otherwise are subject to taxation under section 897 and the collection of a withholding tax under section 1445 except as provided in these provisions. The likely respondents will be individuals and business or other for-profit institutions.

Estimated total annual reporting burden: 600 hours.

The estimated annual burden per respondent varies from 3 hours to 5 hours, depending on individual circumstances, with an estimated average of 4 hours.

Estimated number of respondents: 150.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

Under section 897, a foreign transferor of a U.S. real property interest (USRPI) is generally taxed on gain from the disposition of the USRPI as if the taxpayer were engaged in a U.S. trade or business and as if such gain were effectively connected with such trade or business under section 871 or 882 (ECI). As a means to ensure the collection of the tax, the transferee of the USRPI generally has a withholding tax obligation under section 1445, which is generally 10 percent of the amount realized on the disposition. The withholding agent must report and pay over the tax withheld under section 1445 on Form 8288, ''U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests'', by the 20th day after the disposition of the USRPI. The foreign transferor also must report the gain subject to tax under section 897 by filing a U.S. income tax return. Any amounts withheld under section 1445 are credited against the foreign transferor's U.S. tax liability.

Withholding under section 1445 can be reduced or eliminated pursuant to various nonrecognition provisions (*e.g.*, certain reorganizations under section 368(a)), pursuant to an applicable U.S. income tax treaty, by reason of the tax-exempt status of the foreign transferor, or in situations where the transferor's maximum tax liability under section 897 is less than the withholding tax. To reduce or eliminate the amount to be withheld under section 1445, either the transferor or transferee (acting as the withholding agent) may request a withholding certificate from the IRS citing the grounds for the reduction or elimination of withholding and including any supporting documentation or other evidence substantiating the request.

A withholding certificate that is issued by the IRS prior to the disposition of the USRPI serves to notify the withholding agent that no withholding or reduced withholding is required. If an application for a withholding certificate is submitted before or on the date of the transfer (so it is considered to be pending with the IRS at the time of transfer), the withholding agent is not required to file the withholding tax return and pay over the withholding tax until 20 days after the date the IRS mails the withholding certificate or notice of denial. *See* § 1.1445–1(c)(2)(A). An application for a withholding certificate after the date of transfer can be combined with an application for an early claim for refund. *See* § 1.1445–3(g).

Under section 6109(a)(1), Treasury and the IRS have the authority to issue regulations requiring taxpayers to obtain taxpayer identifying numbers (TINs) for placement on returns, statements, or other documents for the purpose of securing the proper identification of taxpayers. Under the section 6109 regulations, which govern the extent to which foreign persons must have TINs, a foreign person is not required to have a TIN for inclusion on a return, statement, or other document, unless the foreign person: (1) Has ECI at any time during the taxable year, (2) has a U.S. office, U.S. place of business, or a U.S. fiscal or paying agent during the taxable year, or (3) files a tax return, an amended return, or a refund claim, excluding information returns, statements, or other documents. See § 301.6109–1(b)(2).

Explanation of Provisions

The sections 897 and 1445 regulations do not require foreign transferors of USRPIs to provide TINs on withholding tax returns, applications for withholding certificates, and other notices and elections unless the foreign transferor otherwise has previously obtained a TIN. The IRS proposes to amend regulations under sections 897 and 1445 (each discussed in greater detail below) to require foreign transferors to include TINs on such documents so that the IRS can better identify the foreign taxpayer and more easily match the applications, withholding tax returns, notices, and elections with the transferor's tax return for compliance purposes. For example, the use of the foreign transferor's TIN to match the withholding tax return with the foreign transferor's income tax return will facilitate verification of the amount of withholding tax that the foreign taxpayer may credit on its return. The use of the foreign transferor's TIN also will facilitate verification that the foreign transferor files a U.S. tax return reporting the transaction (which could be matched against a withholding tax return and any application for a withholding certificate that has been filed).

In most cases, the requirement of including a TIN under the proposed regulations will not impose a new obligation on the foreign person. Such foreign person typically will be required to file a tax return for the year in which the property was sold, which requires the foreign person to obtain a TIN at that time. Accordingly, the proposed regulations simply would accelerate the time by which the foreign person is required to obtain a TIN. The IRS is considering ways to facilitate obtaining TINs in connection with transactions subject to section 897 and 1445. For example, the IRS is considering approaches for combining an application for a reduced withholding certificate under § 1.1445–3 with an application for a TIN.

1. Section 6109 Regulations

Under section 6109, every person who makes a return, statement, or other document is required to furnish its TIN as required by regulation. Under the section 6109 regulations, a foreign person generally is required to have a TIN if (1) the foreign person has ECI at any time during the taxable year; (2) the foreign person has a U.S. office or place of business or a U.S. fiscal or paying agent during the taxable year; (3) the foreign person files a tax return, amended return, or a refund claim (excluding information returns, statements, or documents). § 301.6109–1(b)(2). A person is required to furnish the TIN of another person (including a foreign person) when filing a return, statement, or other document which requires the TIN of the other person, and the other person is required to have a TIN under the section 6109 regulations. If the person does not know the TIN of the other person, the first person must request it, and if this request is denied, then the first person must file an affidavit with the filing so stating. *See* § 301.6109–1(c).

The IRS and Treasury propose to amend the section 6109 regulations to include a specific reference to the new provisions requiring TINs for foreign taxpayers under sections 897 and 1445. The section 6109 regulations would be amended to provide that foreign persons will be required to have TINs for placement on any return, statement, or other document required by the regulations under section 897 or section 1445. *See* § 301.6109–1(b)(2). The section 6109 regulations also would be amended to provide that another person (*e.g.*, the transferee as withholding agent) making a return, statement, or other document will be required to furnish the TIN of a foreign person as required by the regulations under section 897 or section 1445. *See* § 301.6109–1(c).

2. Section 1445 Regulations

(a) Section 1.1445–1

In connection with the withholding requirements under section 1445, the transferee generally must report and pay over any tax withheld by the 20th day after the date of the transfer. § 1.1445–1(b)(1). Form 8288 ''Withholding Tax Return'' and Form 8288–A ''Statement of Withholding'' are used for this purpose. Form 8288–A serves as a receipt of withholding tax reported and paid over and is stamped by the IRS upon receipt and mailed to the transferor. The transferor must attach the Form 8288–A to its U.S. income tax return to verify the amount of withholding tax creditable on its return.

Under § 1.1445–1(d), Forms 8288 and 8288–A only require the TIN of the transferor and the transferee to the extent the transferor and transferee otherwise have TINs. If the transferee is a U.S. person it will have a TIN, and if the transferee is a foreign person, it must have or obtain a TIN under the section 6109 regulations when filing a Form 8288 (which is considered to be a tax return). A foreign transferor, however, will not have a TIN for placement on the Forms 8288 and 8288–A, unless it is otherwise required to have one under the section 6109 regulations (e.g., the foreign person otherwise has ECI). The section 1445 regulations will be amended to provide that the transferors and transferees must have TINs for placement on the Forms 8288 and 8288–A.

Finally, the section 1445 regulations provide for various documents (including applications for withholding certificates) to be sent to the Assistant Commissioner (International). Section 1.1445–1(g)(10) provides the address of the Assistant Commissioner (International). Because of the restructuring of the IRS, the Office of the Assistant Commissioner (International) no longer exists, and its duties regarding the administration of the section 1445 regulations are performed, in general, by the Philadelphia Service Center. Section 1.1445–1(g)(10) and other provisions in the section 1445 regulations will be amended to reflect this change.

(b) Section 1.1445–2

Under § 1.1445–2(d)(2), a transferee is not required to withhold under section 1445, if, by reason of a nonrecognition provision of the Internal Revenue Code or a U.S. income tax treaty provision, the transferor is not required to recognize gain or loss with respect to the transfer. The transferor must notify the transferee of the nonrecognition provision or treaty provision, and the transferee must provide a copy of the transferor's notice to the IRS by the 20th day after the date of the transfer. Section 1.1445–9T specifies the information the notice must contain, such as identifying information of the transferor, a description of the transaction, and a brief summary of the law and facts supporting the claim of nonrecognition of gain on the transaction. The notice is required to include a TIN of the transferor only if the foreign transferor otherwise has a TIN. The notice forwarded by the transferee to the IRS must include a cover letter identifying the transferee. The transferee must include its TIN on the cover letter only if it has one.

The proposed regulations would withdraw section 1.1445–9T and incorporate it into § 1.1445–2(d)(2). In addition, the information required for inclusion on the notice would be revised to provide that the transferor must have a TIN for inclusion on the notice of nonrecognition. The regulations also would be amended to provide that the transferee must have a TIN for placement on the cover letter.

Certificates of Non-Foreign Status Under § 1.1445–2

Under § 1.1445–2(b), no withholding is required under section 1445 if the transferor of a U.S. real property interest is not a foreign person. If the transferor provides a certificate of non-foreign status to the transferee of the U.S. real property interest prior to or at the time of the transfer, the transferee is not required to withhold under section 1445(a). The certificate of non-foreign status must certify that the transferor is not a foreign person, must set forth the transferor's name, identifying number and address, and must contain the transferor's signature under penalties of perjury.

The IRS is considering requiring Form W–9 to be used as certificates of non-foreign status under § 1.1445–2(b). Form W–9 generally contains the same information as a certificate of non-foreign status and currently is used in the context of section 1441 withholding to determine a taxpayer's non-foreign status. Because Form W–9 is not now required in real estate transactions and because payments with respect to real estate transactions are exempt from backup withholding under § 31.3406(g)–2(e) (although Form W–9 can be used to provide the TIN of the seller to the reporting person required to report the transaction on Form 1099 under § 1.6045–4(l)), the IRS requests comments on the use of Form W–9 in real estate transactions to avoid withholding under section 1445. The IRS believes that the use of Form W–9 could ease compliance with section 1445.

(c) Section 1.1445–3

Section 1.1445–3 provides procedures for the reduction or elimination of withholding under section 1445 pursuant to a withholding certificate issued by the IRS. A withholding certificate may be issued by the IRS in cases where the transferor is exempt from U.S. tax, the transferor's maximum tax liability under section 897 is less than the withholding tax, or where the transferor or transferee enters into an agreement for the payment of tax with the IRS. A withholding certificate that is applied for prior to or on the date of the transfer notifies the transferee that reduced or no withholding is required. A withholding certificate that is applied for after a transfer has been made may authorize a normal refund or an early refund. Either the transferor or transferee may apply for a withholding certificate.

Section § 1.1445–3(b)(2) identifies the information that must be furnished on an application for a withholding certificate. It includes the name and address of the transferee and the transferee's TIN, but only if the transferee has a TIN. It also includes the name and address of all other parties to the transaction (*e.g.,* transferors) and their TINs, but only if they have TINs. The applicant must determine if each party has a TIN, and if none exists for a particular party, the application must so state. The regulations would be amended to provide that the transferee and all other parties (*e.g.,* transferors) must have TINs for placement on an application for a withholding certificate. The regulations would further provide that the application will be denied if the TINs of all the parties are not provided.

(d) Section 1.1445–5

Under § 1.1445–5, special rules are provided concerning withholding required under section 1445(e) on distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates. Paragraph (b)(2) provides that no withholding is required for transfers of a USRPI described in section 1445(e) if no gain or loss is required to be recognized by a foreign person under a nonrecognition provision of the Internal Revenue Code or a provision of a U.S. income tax treaty. The entity or fiduciary otherwise required to withhold must deliver a notice of the nonrecognition transfer to the IRS by the 20th day after the transfer of the USRPI. The entity or fiduciary may obtain a

withholding certificate from the IRS to confirm the applicability of a nonrecognition provision, but is not required to do so.

The notice of a nonrecognition transfer delivered to the IRS must contain a description of the transfer and a supporting explanation of the claim of nonrecognition treatment, as well as identifying information of the entity or fiduciary submitting the notice and each foreign person with respect to which withholding would otherwise be required. The TINs of the entity or fiduciary and each foreign person are required to be furnished only if such persons otherwise have TINs. The regulations under § 1.1445–5(b)(2)(ii) would be amended to provide that the entity or fiduciary and all foreign persons must have TINs to be furnished on the notice of nonrecognition.

(e) Section 1.1445–6

Section 1.1445–6 provides procedures for obtaining a withholding certificate for distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates subject to withholding tax under section 1445(e) and § 1.1445–5. The procedures for obtaining a withholding certificate are modeled after § 1.1445–3, which provides the procedures for obtaining a withholding certificate under section 1445(a). Hence, the entity or fiduciary (acting as withholding agent) or the foreign taxpayer subject to section 897 can apply for a withholding certificate on the basis that the foreign person is exempt from U.S. tax, the transferor's maximum tax liability under section 897 is less than the withholding tax, or an agreement is entered into by the transferor or transferee for the payment of tax.

Section 1.1445–6(b) identifies the information that must be furnished on an application for a withholding certificate. It includes the name, address of the foreign taxpayer subject to section 897 and the foreign taxpayer's TIN, but only if the taxpayer otherwise has a TIN. The regulations will be amended to require the foreign taxpayer to have a TIN for placement on an application for a withholding certificate.

3. Section 897 Regulations

(a) Section 1.897–3

Section § 1.897–3 provides rules enabling a foreign corporation to make a section 897(i) election to be treated as a domestic corporation for purposes of sections 897 and 1445. A foreign corporation making a section 897(i) election is subject to all of the rules under section 897 and 1445 that apply to domestic corporations. For example, if a foreign corporation that has made the section 897(i) election is a USRPHC, interests in it are USRPIs that are subject to taxation under section 897 and withholding tax under section 1445. A foreign corporation that makes an election under section 897(i) is not treated as a domestic corporation for purposes of any other provision of the Code or regulations, except to the extent that it is required to consent to such treatment as a condition of making the election.

The election under section 897(i) must include the name, address, and place and date of incorporation of the foreign corporation and the foreign corporation's TIN but only if the foreign corporation otherwise has a TIN. The regulations would be amended to require the electing foreign corporation to have a TIN for placement on the election.

(b) Section 1.897–5T

Section § 1.897–5T provides that certain distributions of USRPIs (which otherwise qualify for nonrecognition treatment) are not subject to section 897 if any gain from a subsequent disposition of the USRPIs would be included in gross income of the distributee or transferee receiving the USRPI in the distribution. *See, e.g.,* § 1.897–5T(c)(2)(i). An interest will be considered subject to U.S. tax upon its subsequent disposition only if certain reporting requirements are satisfied. *See* § 1.897–5T(d)(1)(i). Under the reporting requirements, the distributor must file an income tax return for the taxable year of the distribution. The person filing the return must attach a document describing the distribution or exchange, including the name and address of the distributee, and its TIN, but only to the extent it has one. *See* § 1.897–5T(d)(1)(iii).

The regulations would be amended to require that the document attached to the return includes the TIN of the distributee. This is necessary to properly identify the foreign distributee which will be subject to section 897 upon a subsequent disposition of the USRPI.

4. Miscellaneous Items

(a) Section 1445(e)(3)

Section 1445(e)(3) provides that if a domestic corporation which is a U.S. real property holding corporation (or at any time during the preceding five year period was a U.S. real property holding corporation) distributes property to a foreign shareholder in redemption of stock under section 302 or in liquidation of the corporation, the corporation must withhold 10 percent of the amount distributed to the foreign shareholder. Withholding is not required if the domestic corporation was ''purged'' of its U.S. real property holding corporation status by disposing of all of its U.S. real property interests within the prior five-year period and recognizing gain (if any) pursuant to section 897(c)(1)(B).

Section 1445(e)(3) was amended by the Small Business Job Protection Act of 1996 (Pub. L. 104–188, Sec. 1704(c)) to provide that similar rules apply in the case of any distribution to which section 301 applies and which is not made out of earnings and profits of the domestic corporation. Because a section 301 distribution by a domestic corporation to a foreign shareholder is also governed by section 1441 (or 1442 or 1443), the section 1441 regulations provide coordination rules between withholding under sections 1445 and 1441 (or 1442 or 1443) in the case of section 301 distributions to foreign shareholders by a domestic corporation which is a U.S. real property holding corporation or was one at any time within the prior five-year period. *See* § 1.1441–3(c)(4).

In general, § 1.1441–3(c)(4) provides that a domestic corporation may elect to withhold on the entire distribution under section 1441 (or 1442 or 1443), and not under section 1445, regardless of whether a portion of the distribution constitutes a return of basis or capital gain. Alternatively, a domestic corporation may elect to withhold under both sections 1445 and 1441 (or 1442 or 1443), in which case the domestic corporation must withhold under section 1441 (or 1442 or 1443) on the portion of the distribution that is estimated to be a dividend under § 1.1441–3(c)(2)(ii)(A) and must withhold under section 1445(e)(3) on the remainder of the distribution. A domestic corporation may withhold a reduced amount on the distribution under section 1445(e)(3) by obtaining a withholding certificate establishing that the amount of capital gain under section 301(c)(3) is less than the withholding tax otherwise due under section 1445(e)(3).

Section 1.1445–5(e) currently provides that if a domestic corporation, the stock of which is a U.S. real property interest, distributes property to a foreign shareholder in a redemption of stock under section 302 or in liquidation of the corporation, the domestic corporation must withhold 10 percent of the fair market value of the property distributed to the foreign shareholder. Section 1.1445–5(e) would be amended to provide that withholding

is required in the case of a distribution of property under section 301(c). A cross-reference to § 1.1441–3(c)(4), which provides the coordination rules for withholding between sections 1445 and 1441 (or 1442 or 1443), is provided.

(b) Section 121 Exclusion

Prior to the Taxpayer Relief Act of 1997 (Pub. L. 105–34; 111 Stat. 788) (TRA 97), section 121 provided a one-time exclusion from gross income up to $125,000 for certain gains from the sale of a principal residence by a taxpayer that was 55 years or older. The amendment of section 121 under TRA 97 expanded the exclusion to all taxpayers (not just those 55 years of age and older) and increased the amount of the exclusion to $250,000 (or $500,000, in the case of a husband and wife filing a joint return). Section 121(e) denies the exclusion to nonresident alien taxpayers who expatriated from the United States and are subject to the provisions of section 877(a).

For section 121 to apply, the taxpayer must have owned and used the property as a personal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale. Section 121(a). An alien individual who owns and has used a U.S. real property interest as a personal residence during the 5-year period prior to the date of sale may nevertheless be a nonresident alien at the time of sale and subject to sections 897 and 1445. In addition, certain alien individuals (for example, full-time diplomats or employees of international organizations), who may own and use a U.S. real property interest as a personal residence at the time of sale, are treated as nonresident alien individuals for tax purposes under section 7701(b).

In connection with the amendments to section 121, section 1034 was repealed. Section 1034 had provided for nonrecognition of gain upon the sale of a personal residence provided that another personal residence of greater value was purchased within a specified period of time. Prior to the repeal of section 1034, withholding agents could rely on a notice of nonrecognition under § 1.1445–2(b)(2) on certain section 1034 exchanges because section 1034 exchanges were treated as nonrecognition exchanges for purposes of sections 897 and 1445. *See* § 1.897–6T(a)(5). Section 121 is not treated as a nonrecognition exchange for purposes of sections 897 and 1445. *See* § 1.897–6T(a)(2). Therefore, withholding agents cannot rely on a notice of nonrecognition under § 1.1445–2(b)(2) with respect to the section 121 exclusion, and dispositions of personal residences entitled to the section 121 exclusion are not entitled to a reduction in withholding absent a withholding certificate. Accordingly, the withholding certificate provisions of § 1.1445–3(c) are proposed to be amended to provide that a claimed adjustment to the maximum tax liability on the disposition of a U.S. real property interest will include the section 121 exclusion if the claim includes information establishing that the transferor is entitled to the benefits of section 121. Because section 1034 has been repealed, the following regulatory provisions concerning section 1034 will be withdrawn effective on the date of its repeal: § 1.897–6T(a)(5), § 1.897–6T(a)(7), *Examples 2* and *3*, and § 1.1445–9T(b)(6).

(c) Section 1031 Like-Kind Exchanges

Section 1031(a) provides for the nonrecognition of gain or loss on the exchange of like-kind property which is held for productive use in a trade or business or held for investment. Section 1031(a)(3) provides for the exchange of like-kind property in deferred exchanges, where the taxpayer has 45 days after it relinquishes the property to the transferee to identify replacement property and the transferee has until the earlier of 180 days or the due date of the tax return for the year of transfer to deliver such property to the transferor. In cases where there is a simultaneous exchange of like-kind U.S. real property interests, the foreign transferor can provide a notice of recognition under § 1.1445–2(d)(2) to the transferee, and the transferee can rely on such notice because the like-kind exchange will be fully completed on the day of the exchange.

In the case of a deferred like-kind exchange of U.S. real property interests, the issue has been raised whether the transferee can rely on a notice of nonrecognition under § 1.1445–2(d)(2) when the exchange is not completed (because of the 45 day and 180 day rule) and the determination of nonrecognition is not known by the 20th day after receipt of the relinquished property by the transferee (when it has the obligation to pay withholding tax and file a withholding tax return, Form 8288). It has been the view of the IRS and Treasury that the transferee cannot rely on a notice of nonrecognition in the case of a deferred like-kind exchange, because the transferee cannot be assured that the exchange will qualify for nonrecognition treatment under section 1031. Although § 1.1445–2(d)(2) does not apply to section 1031 transactions, taxpayers have requested withholding certificates under § 1.1445–3 in the case of deferred like-kind exchanges. This practice will be incorporated in the regulations by amending § 1.1445–3(c) to provide that taxpayers may obtain withholding certificates in the case of deferred like-kind exchanges under section 1031(a)(3) (*see* also the safe-harbor for reverse like-kind exchanges under Rev. Proc. 2000–37, 2000–40 I.R.B. 308).

(d) Transfers By an Entity Treated as a Disregarded Entity for U.S. Tax Purposes

Under § 1.1445–2(a), a transferee generally has the duty to withhold under section 1445(a) if the transferor is a foreign person and the transferee is acquiring a U.S. real property interest. A transferee generally is not required to withhold under section 1445(a) if the transferee receives a certificate of non-foreign status from the transferor without actual knowledge (or notice from an agent of the transferor or transferee) that the certificate is false. § 1.1445–2(b)(2). While the transferee is not required to request a certificate of non-foreign status and may rely on other means to determine the non-foreign status of the transferor, the transferee will be subject to the liability imposed under section 1445 if the transferor is in fact a foreign person and the transferor has not received a certificate of non-foreign status. § 1.1445–2(b)(1). Thus, the transferee may demand a certificate of non-foreign status and is entitled to withhold under section 1445 if a certificate of non-foreign status is not provided. Id.

Taxpayers have inquired about the operation of sections 897 and 1445 where the legal entity transferring a U.S. real property interest is disregarded as an entity separate from its owner for U.S. tax purposes, for example, under § 301.7701–3 (disregarded entity). If the transferor is a disregarded entity, the owner (and not the entity) is treated as the transferor of property for U.S. tax purposes, including sections 897 and 1445. *See, e.g.*, § 301.7701–3(a). Accordingly, if a disregarded entity disposes of a U.S. real property interest and its owner is a foreign person, the foreign person is treated as the transferor of the property and is subject to tax under sections 897 and 1445. If a disregarded entity disposes of a U.S. real property interest and its owner is a U.S. person, then the U.S. person is the transferor of the property and may provide a certificate of non-foreign status.

In order to clarify the treatment of disregarded entities, the regulations are amended to provide that a disregarded entity may not provide a certificate of

non-foreign status because the disregarded entity is not the transferor. The sample certifications which an entity may provide to the transferee with respect to its non-foreign status (as provided in § 1.1445–2(b)(2)) are amended to include a certification that the entity is not a disregarded entity for U.S. tax purposes.

Proposed Effective Date

These regulations are proposed to apply to transactions occurring 30 days or more after the date final regulations are published in the **Federal Register**.

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 these regulations do not impose a collection of information on U.S. small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue 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 business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a singed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 13, 2002, beginning at 10 am, in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by October 23, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Robert W. Lorence, Jr., of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting, and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, 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 for part 1 continues to read in part as follows:

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

2. In § 1.897–1, paragraph (p), the first sentence is amended by adding the language ''or the identification number assigned by the Internal Revenue Service (*see* § 301.6109–1 of this chapter)'' immediately after the language ''United States social security number'.

3. Section 1.897–2 is amended as follows:

For each of the paragraphs listed in the first column, remove the language in the second column and add in its place the language in the third column:

Paragraphs	Remove	Add
(g)(1)(i)(B)	Director, Foreign Operations District (''Director'').	Commissioner, Small Business/Self Employed Division (SB/SE).
(g)(1)(i), fourth sentence of concluding text immediately following paragraph (g)(1)(i)(B).	Director	Commissioner.
(g)(1)(iii) heading	Director	Commissioner.
(g)(1)(iii)(A), first, fourth, and last sentences	Director	Commissioner.
(g)(1)(iii)(A), third sentence	Director, Foreign Operations District; 1325 K St. NW.; Washington, DC 20225.	Commissioner, Small Business/Self Employed Division (SB/SE); S C3–413 NCFB, 500 Ellin Road, Lanham, MD 20706.
(g)(1)(iii)(B) heading	Director's	Commissioner's.
(g)(1)(iii)(B) introductory text	Director	Commissioner.
(g)(1)(iii)(B) concluding text immediately following (g)(1)(iii)(B)(*2*).	Director	Commissioner.
(g)(1)(iii)(C) both places it appears	Director	Commissioner.
(g)(1)(iii)(D) heading	Director	Commissioner.
(g)(1)(iii)(D)	Director	Commissioner.
(g)(2)(i)(B)	Director	Commissioner.
(g)(2)(iii) heading	Director	Commissioner.
(g)(2)(iii)(A), first, fourth, and fifth sentence (both places it appears).	Director	Commissioner.
(g)(2)(iii)(A), third sentence	Director, Foreign Operations District; 1325 K St. NW.; Washington, DC 20225.	Commissioner, Small Business/Self Employed Division (SB/SE); S C3–413 NCFB, 500 Ellin Road, Lanham, MD 20706.
(g)(2)(iii)(B) heading	Director's	Commissioner's.
(g)(2)(iii)(B) introductory text	Director	Commissioner.
(g)(2)(iii)(B) concluding text immediately following (g)(2)(iii)(B)(*2*).	Director	Commissioner.

Paragraphs	Remove	Add
(g)(2)(iii)(C), first and second sentences	Director	Commissioner.
(g)(2)(iii)(D) heading	Director	Commissioner.
(g)(2)(iii)(D)	Director	Commissioner.
(g)(2)(iv), fourth sentence	Director	Commissioner.
(h)(2)(v), third sentence	Assistant Commissioner. (International), Director, Office of Compliance, OP:I:C:E:666, 950 L'Enfant Plaza South, SW, COMSAT Building, Washington, DC 20024.	Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.
(h)(4)(ii), first sentence	Assistant Commissioner (International), Director, Office of Compliance, OP:I:C:E:666, 950 L'Enfant Plaza South, SW, COMSAT Building, Washington, DC 20024.	Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.

4. Section 1.897–3 is amended as follows:

1. For each of the paragraphs listed in the first column, remove the language in the second column and add in its place the language in the third column:

Paragraphs	Remove	Add
(c), introductory text	Director of the Foreign Operations District, 1325 K St., NW., Washington, DC 20225.	Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.
(c)(1), introductory text, last sentence	which must set forth	which must contain all the following information.
(d)(1), fourth sentence	Foreign Operations District	Philadelphia Service Center.
(d)(2)(i), penultimate sentence	Director, Foreign Operations District	U.S. Treasury.
(f)(1), second sentence	Director, Foreign Operations District, 1325 K St., NW., Washington, DC 20225.	Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.
(f)(1), fifth sentence	Foreign Operations District	Philadelphia Service Center.
(g)(1), second sentence	Director of the Foreign Operations District	Director, Philadelphia Service Center.

2. In paragraph (c)(1)(i), remove the parenthetical ''(if any)'' after the words ''identifying number'.

5. Section 1.897–5 is added to read as follows:

§ 1.897–5 Corporate distributions.

(a) through (d)(1)(iii)(E) [Reserved]. For further guidance, see § 1.897–5T(a) through (d)(1)(iii)(E).

(d)(1)(iii)(F) Identification by name and address of the distributee or transferee, including the distributee's or transferee's taxpayer identification number;

(d)(1)(iii)(G) through (d)(4) [Reserved]. For further guidance, see § 1.897–5T(d)(1)(iii)(G) through (d)(4).

(e) *Effective date.* This section is applicable to transfers and distributions after 30 days after publication of final regulations in the **Federal Register**.

6. In § 1.897–5T, paragraph (d)(1)(iii)(F) is revised to read as follows:

§ 1.897–5T Corporate distributions (temporary).

* * * * *

(d) * * * (1) * * *

(iii) * * *

(F) [Reserved]. For further guidance, see § 1.897–5(d)(1)(iii)(F).

* * * * *

§ 1.897–6T [Amended]

7. Section 1.897–6T is amended as follows:

1. In paragraph (a)(2), second sentence, the language '', 1034'' is removed.

2. Paragraph (a)(5) is removed and reserved.

3. Paragraph (a)(7), *Example 2* and *Example 3* are removed and reserved.

8. Section 1.1445–1 is amended as follows:

1. In paragraph (c)(1), second sentence, remove the language ''filed with the Internal Revenue Service Center, Philadelphia, PA 19255'' and add in its place the language ''filed at the location as provided in the instructions to Forms 8288 and 8288–A''.

2. In paragraph (c)(2)(i)(B), second sentence, remove the phrase '',if any,'' after the words ''taxpayer identification number''.

3. In paragraphs (d)(1)(i) and (d)(1)(ii), remove the parenthetical ''(if any)'' after the words ''identifying number''.

4. In paragraphs (d)(2)(i), (d)(2)(iv)(B), and (d)(2)(vi)(B), remove the parenthetical ''(if any)'' after the words ''identifying number''.

5. Paragraphs (g)(9) and (g)(10) are revised.

The revisions read as follows:

§ 1.1445–1 Withholding on dispositions of U.S. real property interests by foreign persons: In general.

* * * * *

(g) * * *

(9) *Identifying number.* Pursuant to § 1.897–1(p), an individual's identifying number is the social security number or the identification number assigned by the Internal Revenue Service (see § 301.6109–1 of this chapter). The identifying number of any other person is its United States employer identification number.

(10) *Address of the Director, Philadelphia Service Center.* Any written communication directed to the Director, Philadelphia Service Center is to be addressed as follows: P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.

9. Section 1.1445–2 is amended as follows:

1. Paragraph (b)(2)(iii) is redesignated as paragraph (b)(2)(iv), and new paragraph (b)(2)(iii) is added.

2. Newly designated paragraph (b)(2)(iv)(B) is revised.

3. In paragraph (d)(2)(i)(B), the language ''Assistant Commissioner (International)'' is removed, and ''Director, Philadelphia Service Center'' is added in its place, and the parenthetical ''(if any),'' is removed after the words ''identifying number''.

4. Paragraphs (d)(2)(iii) and (d)(2)(iv) are added immediately following the concluding text following paragraph (d)(2)(ii)(B).

5. In paragraphs (d)(3)(iii)(A)(*2*) and (d)(3)(iii)(A)(*3*), the parenthetical ''(if any)'' is removed after the words ''identifying number''.

The revision and additions read as follows:

§ 1.1445–2 Situations in which withholding is not required under section 1445(a).

* * * * *

(b) * * *

(2) * * *

(iii) *Disregarded entities.* A disregarded entity may not certify that it is the transferor of a U.S. real property interest, as the disregarded entity is not the transferor for U.S. tax purposes, including sections 897 and 1445. Rather, the owner of the disregarded entity is treated as the transferor of property and must provide a certificate of non-foreign status to avoid withholding under section 1445. A disregarded entity for these purposes means an entity that is disregarded as an entity separate from its owner under § 301.7701–3 of this chapter, a qualified REIT subsidiary as defined in section 856(i), or a qualified subchapter S subsidiary under section 1361(b)(3)(B). Any domestic entity must include in its certification of non-foreign status with respect to the transfer a certification that it is not a disregarded entity.

(iv) * * *

(B) *Entity transferor.*

''Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by [name of transferor] , the undersigned hereby certifies the following on behalf of [name of the transferor]:

1. [Name of transferor] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. [Name of transferor] is not a disregarded entity as defined in § 1.1445–2(b)(2)(iii);

3. [Name of transferor]'s U.S. employer identification number is _____; and

4. [Name of transferor]'s office address is _____.

[Name of transferor] understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of [name of transferor].

[Signature(s) and date]

[Title(s)]''

* * * * *

(d) * * *

(2) * * *

(iii) *Contents of the notice.* No particular form is required for a transferor's notice to a transferee that the transferor is not required to recognize gain or loss with respect to a transfer. The notice must be verified as true and signed under penalties of perjury by the transferor, by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee or equivalent fiduciary in the case of a trust or estate. The following information must be set forth in paragraphs labeled to correspond with the designation set forth as follows—

(A) A statement that the document submitted constitutes a notice of a nonrecognition transaction or a treaty provision pursuant to the requirements of § 1.1445–2(d)(2);

(B) The name, identifying number, and home address (in the case of an individual) or office address (in the case of an entity) of the transferor submitting the notice;

(C) A statement that the transferor is not required to recognize any gain or loss with respect to the transfer;

(D) A brief description of the transfer; and

(E) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.

(iv) *No notice allowed.* The provisions of this paragraph (d)(2) do not apply to exclusions from income under section 121 and to non-simultaneous like-kind exchanges under section 1031 where the transferee cannot determine that the exchange has been completed and all the conditions for nonrecognition have been satisfied at the time it is otherwise required to pay the section 1445 withholding tax and file the withholding tax return (Form 8288, ''U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests''). In these cases, the transferee is excused from withholding only upon the timely application for and receipt of a withholding certificate under § 1.1445–3 (*see* § 1.1445–3(b)(5) and (6) for specific rules applicable to transactions under sections 121 and 1031).

* * * * *

10. Section 1.1445–3 is amended as follows:

1. For each of the paragraphs listed in the column below, remove the language ''Assistant Commissioner (International)'', and add ''Director, Philadelphia Service Center'' in its place.

Paragraphs

(b)(1), first sentence

(f)(1), first sentence

(f)(2)(iii), heading

(f)(2)(iii), first sentence

(g), third sentence, introductory text

2. In paragraph (b)(1), last sentence, remove the language ''of this section'' and add '', and to the extent applicable, paragraph (b)(5) or (6) of this section'' in its place.

3. Paragraph (b)(2) is revised.

4. Paragraphs (b)(5) and (b)(6) are added.

5. In paragraphs (f)(3)(i) and (g)(1), remove the parenthetical ''(if any)'' after the words ''identifying number''.

The revision and additions read as follows:

§ 1.1445–3 Adjustments to amount required to be withheld pursuant to withholding certificate.

* * * * *

(b) * * *

(2) *Parties to the transaction.* The application must set forth the name, address, and identifying number of the person submitting the application (specifying whether that person is the transferee or transferor), and the name, address, and identifying number of other parties to the transaction (specifying whether each such party is a transferee or transferor). The Service will deny the application if complete information, including the identifying numbers of all the parties, is not provided. Thus, for example, the applicant should determine if an identifying number exists for each party, and, if none exists for a particular party, the applicant should notify the particular party of the obligation to get an identifying number before the application can be submitted to the Service. The address provided in the case of an individual must be that individual's home address, and the address provided in the case of an entity must be that entity's office address. A mailing address may be provided in addition to, but not in lieu of, a home address or office address.

* * * * *

(5) *Special rule for exclusions from income under section 121.* A withholding certificate may be sought on the basis of a section 121 exclusion as a reduction in the amount of tax due under paragraph (c)(2)(v) of this section. The application must include

information establishing that the transferor, who is a nonresident alien individual at the time of the sale (and is therefore subject to sections 897 and 1445) is entitled to claim the benefits of section 121. For example, a claim for reduced withholding as a result of section 121 must include information that the transferor occupied the U.S. real property interest as his or her personal residence for the required period of time.

(6) *Special rule for like-kind exchanges under Section 1031.* A withholding certificate may be requested with respect to a like-kind exchange under section 1031 as a transaction subject to a nonrecognition provision under paragraph (c)(2)(ii) of this section. The application must include information substantiating the requirements of section 1031. The IRS may require additional information during the course of the application process to determine that the requirements of section 1031 are satisfied. In the case of a deferred like-kind exchange, the transferee is excused from withholding only if the transferee or transferor submits an application for a withholding certificate prior to or on the date of transfer, in which case the withholding tax will be placed in escrow pursuant to procedures established by the IRS and ultimately paid to the IRS if the withholding certificate is denied or released for the benefit of the taxpayer if the withholding certificate is granted. See § 1.1445–1(c)(2) for rules concerning delayed reporting and payment where an application for a withholding certificate has been submitted to the IRS prior to or on the date of transfer.

* * * * *

§ 1.1445–4 [Amended]

11. In § 1.1445–4, paragraph (c)(2), second sentence, is amended by removing the language ''Assistant Commissioner (International)'' and adding ''Director, Philadelphia Service Center'' in its place.

12. Section 1.1445–5 is amended as follows:

1. In paragraph (b)(2)(ii), first sentence, remove the language ''Assistant Commissioner (International)'' and add ''Director, Philadelphia Service Center'' in its place.

2. In paragraphs (b)(2)(ii)(B) and (b)(2)(ii)(C), remove the parenthetical ''(if any)'' after the words ''identifying number''.

3. Paragraph (b)(8)(iii) is revised.

4. In paragraph (c)(3)(v), first and fifth sentences, remove the language ''Assistant Commissioner (International)'' and add ''Director, Philadelphia Service Center'' in its place.

5. Paragraph (e)(1)(ii) is revised.

6. Paragraph (e)(2) is redesignated as paragraph (e)(3), and new paragraph (e)(2) is added,

7. In newly designated paragraph (e)(3)(iii)(B), remove the language ''§ 1.1445–5(e)(2)(iii)(B)'' and add ''§ 1.1445–5(e)(3)(iii)(B)'' in its place; and remove the language ''paragraph (e)(2)(iii)(B)'' and add ''paragraph (e)(3)(iii)(B)'' in its place.

The revisions and additions read as follows:

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(b) * * *

(8) * * *

(iii) *Distributions by certain domestic corporations to foreign shareholders.* The provisions of section 1445(e)(3) and paragraph (e)(1) of this section, requiring withholding upon distributions in redemption of stock under section 302(a) or liquidating distributions under Part II of subchapter C of the Internal Revenue Code by U.S. real property holding corporations to foreign shareholders, shall apply to distributions made on or after January 1, 1985. The provisions of section 1445(e)(3) and paragraph (e)(1) of this section requiring withholding on distributions under section 301 by U.S. real property holding corporations to foreign shareholders shall apply to distributions made after August 20, 1996. The provisions of paragraph (e) of this section providing for the coordination of withholding between sections 1445 and 1441 (or 1442 or 1443) for distributions under section 301 by U.S. real property holding corporations to foreign shareholders apply to distributions after December 31, 2000 (*see* § 1.1441–3(c)(4) and (h)).

* * * * *

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

(ii) There is a distribution of property in redemption of stock treated as an exchange under section 302(a), in liquidation of the corporation pursuant to the provisions of Part II of subchapter C of the Internal Revenue Code (sections 331 through section 341), or with respect to stock under section 301 that is not made out of earnings and profits of the corporation.

(2) *Coordination rules for Section 301 distributions.* If a domestic corporation makes a distribution of property under section 301 to a foreign person whose interest in such corporation constitutes a U.S. real property interest under the provisions of section 897 and the regulations thereunder, then see § 1.1441–3(c)(4) for rules coordinating withholding obligations under sections 1445 and 1441 (or 1442 or 1443)).

* * * * *

13. Section 1.1445–6 is amended as follows:

1. The section heading and paragraph (b)(3) are revised.

2. For each of the paragraphs listed in the column below, remove the language ''Assistant Commissioner (International)'' and add ''Director, Philadelphia Service Center'' in its place.

Paragraphs

(f)(1), first sentence
(f)(2)(iii), heading
(f)(2)(iii)
(g), introductory text, second sentence

3. Paragraphs (f)(3)(i) and (g)(1) are amended by removing the parenthetical ''(if any)'' after the words ''identifying number''.

The revision reads as follows:

§ 1.1445–6 Adjustments pursuant to withholding certificate of amount required to be withheld under section 1445(e).

* * * * *

(b) * * *

(3) *Relevant taxpayers.* An application for withholding certificate pursuant to this section must include all of the following information: the name, identifying number, and home address (in the case of an individual) or office address (in the case of an entity) of each relevant taxpayer with respect to which adjusted withholding is sought.

* * * * *

§ 1.1445–9T [Removed]

14. Section 1.1445–9T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

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

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

16. Section 301.6109–1 is amended as follows:

1. In paragraph (b)(2)(v), remove the word ''and''.

2. In paragraph (b)(2)(vi), remove the period at the end of the paragraph and add ''; and'' in its place.

3. Paragraph (b)(2)(vii) is added.

4. In paragraph (c), first and third sentences, remove the language ''or (vi) of this section'' and add ''(vi), or (vii) of this section'' in its place.

The addition reads as follows:

§ 301.6109–1 Identifying numbers.

* * * * * *

(b) * * *

(2) * * *

(vii) A foreign person whose taxpayer identifying number is required to be furnished on any return, statement, or other document as required by the income tax regulations under section 897 or 1445.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–18792 Filed 7–25–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–090]

RIN 2115–AA97

Safety Zone; East River, Manhattan, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in a portion of the waters of the East River, Western Channel, between Manhattan and Roosevelt Island, NY. This action is necessary to provide for the safety of construction crews and motorists during rehabilitation of a portion of the Franklin Delano Roosevelt (FDR) Drive between East 56th Street and East 63rd Street in Manhattan, NY. This action is intended to prevent vessels from the hazards associated with construction, operation and disassembly of a temporary Outboard Detour Roadway and its protective fendering system, and to minimize the risk of allision with those structures, once constructed, by restricting marine traffic within the zone.

DATES: Comments and related material must reach the Coast Guard on or before August 16, 2002.

ADDRESSES: You may mail comments and related material to the Waterways Oversight Branch (CGD01–02–090), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at Room 202, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments can also be made via electronic mail to: *Actny-wwm/wob/forms@d1.uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Luis E. Martinez, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4193.

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 document number for this rulemaking (CGD01–02–090), 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 and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. We may change this proposed rule in view of the comments.

Public Meeting

The Coast Guard does not now plan to hold a public meeting. Persons may request a public meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one will aid this rulemaking, we will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The New York State Department of Transportation (NYSDOT) is undertaking the rehabilitation of the FDR Drive in Manhattan, NY. The project is scheduled to begin on September 1, 2002 and to continue until approximately June 2007. It will include the building of a temporary Outboard Detour Roadway (causeway) adjacent to the northbound lanes of a portion of the FDR Drive that will provide three lanes of motor vehicle traffic over the Western Channel of the East River between East 56th Street and East 63rd Street in Manhattan.

The temporary Outboard Detour Roadway will be protected from marine traffic interference by a fendering system positioned adjacent to and just outside the western edge of the navigable channel in the East River's Western Channel. The fendering system will run the length of the Outboard Detour Roadway. It is designed to withstand an allision by a vessel displacing 38,000 long tons (38,610 metric tons) striking at a speed of 6.8 knots and a 7.5 degree angle of approach.

The proposed rule would exclude all vessels from the immediate vicinity of the Outboard Detour Roadway during the construction, operation and disassembly of the structure and its protective fendering system. By excluding marine traffic, the zone would protect maritime users from the hazards associated with the construction, operation and disassembly of those structures and protect Outboard Detour Roadway users from the risk of vessel allision or interference with that structure. The proposed safety zone would commence on September 1, 2002.

In order to provide further protection for roadway users, we contemplate the subsequent establishment of a Regulated Navigation Area (RNA) in the Western Channel of the East River between 23rd Street, Manhattan (Poorhouse Flats Range) and East 96th Street, Manhattan (Hell's Gate). No vessel with a displacement of greater than 38,000 long tons would be permitted to enter the RNA without tugboat assistance. That RNA will be the subject of separate rulemaking process as we draw closer to the projected opening of the Outboard Detour Roadway in 2004.

Discussion of Proposed Rule

The proposed rule would establish a safety zone in the waters of the East River, Western Channel, extending from the Manhattan riverbank to the western boundary of the federal navigable channel and running approximately along the length of the projected Outboard Detour Roadway's protective fendering system. More specifically, the zone would include all waters enclosed by a line connecting the following points: beginning on the Manhattan riverbank at a point 40°45′35.7″ N, 073°57′25.2″ W (Point A), thence southeasterly to a point 40°45′34.6″ N, 073°57′24.4″ W (Point B), thence southwesterly along the western boundary of the Federal navigable channel to a point 40°45′10.1″ N, 073°57′46.6″ W (Point C), then northwesterly to the Manhattan riverbank at a point 40°45′10.5″ N, 073°57′48.9″ W (Point D), thence northeasterly along the riverbank to the place of beginning (Point A).

The safety zone would protect mariners from hazards associated with the construction, operation and disassembly of the Outboard Detour Roadway and its protective fendering

system and would help preserve the security and integrity of those structures. No person would be allowed to enter or remain in the safety zone at any time without the permission of the Captain of the Port. Every person or vessel in a safety zone would be required to obey any direction or order of the Captain of the Port.

The safety zone would commence on September 1, 2002, when construction begins on the temporary Outboard Detour Roadway. Action would be taken to withdraw the rule when the safety zone is no longer required. On the basis of information currently available to the Coast Guard, we project that the safety zone would be necessary until approximately June 2007.

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 10(e) of the regulatory policies and procedures of DOT is unnecessary.

The effect of this proposed rule would not be significant as it would not prevent maritime traffic from navigating the East River, Western Channel. The proposed safety zone would merely prevent vessels from entering a relatively small area of water west of the navigable channel to prevent interference with the construction, operation and disassembly of an Outboard Detour Roadway and its protective fendering system.

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 enter a small portion of the East River, Western Channel, during the times the proposed safety zone would be in effect.

This proposed rule would not have a significant economic impact on a substantial number of small entities because it will not prevent maritime traffic from navigating the East River. The proposed safety zone would merely prevent vessels from entering a relatively small area of water west of the navigable channel in order to prevent interference with the construction, operation and disassembly of an Outboard Detour Roadway and its protective fendering system.

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 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 Lieutenant L.E. Martinez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

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

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not affect 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 does not concern 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. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, 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 for inspection or copying where indicated under **ADDRESSES.**

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.

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, and 160.5; 49 CFR 1.46.

2. Add a new § 165.167 to read as follows:

§ 165.167 Safety Zone; East River Western Channel, Manhattan, NY.

(a) *Location.* The waters of the East River enclosed by a line connecting the following boundaries are established as a safety zone: beginning on the Manhattan riverbank at a point 40°45′35.7″ N, 073°57′25.2″ W (Point A), thence southeasterly to a point 40°45′34.6″ N, 073°57′24.4″ W (Point B), thence southwesterly along the western boundary of the federal navigable channel to a point 40°45′10.1″ N, 073°57′46.6″ W (Point C), then northwesterly to the Manhattan riverbank at a point 40°45′10.5″ N, 073°57′48.9″ W (Point D), thence northeasterly along the riverbank to the place of beginning (Point A). All coordinates are North American Datum 1983.

(b) *Regulations.* The general regulations contained in § 165.23 of this part apply.

Dated: July 18, 2002.

C.E. Bone,

Captain, Coast Guard, Captain of the Port, New York.

[FR Doc. 02–18921 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–023]

RIN 2115–AA97

Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety and security zones for liquefied natural gas carrier (LNGC) vessels and a liquefied natural gas facility within the Boston Captain of the Port Zone. Entry into or movement within these zones would be prohibited without prior authorization from the Captain of the Port (COTP), Boston, MA. These zones are needed to safeguard the LNGC vessels and Liquid Natural Gas (LNG) facility, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and are needed to protect persons, vessels and others in the maritime community from the safety hazards associated with the transit and limited maneuverability of an LNGC vessel.

DATES: Comments and related material must reach the Coast Guard on or before August 26, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket (CGD01–02–023), will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3030.

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 (CGD1–02–023), 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 comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

The Coast Guard does not plan to hold a public meeting regarding this proposed rule. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address listed under **ADDRESSES**, explaining why one would be beneficial. If we determine a meeting would aid in this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In light of the terrorist attacks in New York City and Washington, D.C. on September 11, 2001, safety and security zones are being established to safeguard the liquefied natural gas carrier (LNGC) vessels and Liquefied Natural Gas (LNG) facilities, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and to protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a LNGC vessel. These safety and security zones would prohibit entry into or movement within the specified areas.

The Coast Guard proposes establishing safety and security zones around LNGC vessels while the vessels are anchored in the waters of Broad Sound. This rule would also create a moving safety zone around any LNGC vessel within navigable waters of the United States in the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10. To the extent that it is applicable, under the Ports and Waterways Safety Act, (33 U.S.C.S. 1221 *et seq.*, and 46 U.S.C.S. 391a) navigable waters of the United States include all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States determined in accordance with international law.

The Captain of the Port anticipates some impact on vessel traffic due to this proposed regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone.

Discussion of Proposed Rule

The Coast Guard proposes to establish three pairs of safety and security zones with identical boundaries, within the COTP Boston zone. The first pair of safety and security zones are proposed in all waters of Broad Sound within a 500-yard radius of any anchored LNGC vessel located within an area bounded by a line starting at position 42°25′ N, 070°58′ W; then running southeast to position 42°22′ N, 070°56′ W; then running east to position 42°22′ N, 070°50′ W; then running north to position 42°25′ N, 070°50′ W; then running west back to the starting point. The second pair of zones proposed would be in all waters of the Mystic River within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA. Finally, except as enumerated above, safety and security zones are proposed two miles ahead and one mile astern, and 500 yards on each side of any LNGC vessel underway within the COTP Boston zone. All coordinates are NAD 83.

This proposed rulemaking would replace the established safety zone listed at 33 CFR 165.110. That safety zone does not provide the current level of necessary protection. Section 165.110 recognizes the safety concerns with transits of LNGC vessels, but is inadequate to protect LNGC vessels from possible terrorist attack, sabotage or other subversive acts. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the flammable nature of LNGC vessels and impact the ignition of this cargo could have on the port of Boston and surrounding areas, increased protection of these vessels and the Distrigas facility is necessary.

This proposed rulemaking would provide increased protection for LNGC vessels moored at the Distrigas facility and establishes protection for the vessels in Broad Sound. It would also provide continuous protection for LNGC vessels 2 miles ahead, 1 mile astern, and 500 yards on each side of an LNGC vessel anytime a vessel is underway within the COTP Boston zone, rather than limiting this protection to the Boston Main Ship Channel while a vessel is transiting Boston Harbor and Boston North Channel (as does the previous zone in § 165.110).

The increased protection provided in this proposed rulemaking also recognizes the safety concerns associated with an unloaded LNGC vessel. 33 CFR 165.110 only establishes safety zones around loaded LNG tank vessels or while the vessel is transferring its cargo. This proposed rulemaking would establish safety and security zones around any LNGC vessel, loaded or unloaded, while anchored in Broad Sound, at the Distrigas facility pier, and any time a LNGC vessel is located in the Boston Marine Inspection Zone and Captain of the Port Zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. These zones would provide necessary protection to unloaded vessels, which continue to pose a safety and security risk if unprotected. This proposed rulemaking also recognizes the continued need for safety zones around LNGC vessels, which are necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a LNGC vessel laden with LNG or residual cargo.

The Coast Guard recognizes that operational marine terminals are presently adjacent to the Distrigas, Everett MA facility and could be impacted by this proposed rule. The Coast Guard does not seek to hinder the operations these facilities conduct in the course of their normal business. The Coast Guard would not restrict the normal everyday business of these adjacent facilities under this proposed rule, and would permit them to continue normal pierside and waterside activities as they always have. However, in the event a significant security risk exists on their properties or a terrorist event is imminent or has occurred, these activities may come under increased scrutiny and possible restrictions.

No person or vessel would be able to enter or remain in the proposed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone would be required to obey any direction or order of the Captain of the Port. The Captain of the Port would be able to take possession and control of any vessel in a security zone and remove any person, vessel, article or thing from a security zone. No person would be able to board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. To the extent that it is applicable, these regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225, 1226.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions.

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).

The Coast Guard expects the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

There may be some adverse effects on the maritime community by this proposed rule, but those effects would be minimized by: the minimal time that vessels would be restricted from the areas, the ample room for vessels to navigate around the zones in Broad Sound and, in most portions of the navigable waters of the United States, the fact that vessels could transit ahead, behind, or after the passage of LNGC vessels. In addition, vessels would be able to request permission from the Captain of the Port or representatives on scene to pass through the zones, and advance notifications would be made to the local maritime community by marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard 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 rule would affect the

following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Broad Sound or Boston Harbor. For the reasons enumerated in the *Regulatory Evaluation* section above, in addition to the fact that small entities have been operating in the Captain of the Port Boston Zone under a similar regulation for over 16 years, these safety and security zones would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public 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 process. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call LT Dave Sherry, at (617) 223–3030. 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 comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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

The Coast Guard analyzed this proposed rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

The Coast Guard analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

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.

List of Subjects in 33 CFR Part 165

Harbors, Marine security, 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, and 160.5; 49 CFR 1.46.

2. Revise § 165.110 to read as follows:

§ 165.110 Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Massachusetts.

(a) *Definitions.* For purposes of this section, *navigable waters of the United States* includes all waters of the territorial sea as described in Presidential Proclamation No. 5928 of December 27, 1988. Presidential Proclamation No. 5928 of December 27, 1988 declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States.

(b) *Location.* The following areas are safety and security zones:

(1) *Vessels underway.* All navigable waters of the United States within the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10, two miles ahead and one mile astern, and 500 yards on each side of any liquefied natural gas carrier (LNGC) vessel while underway.

(2) *Vessels anchored in the Broad Sound.* All waters within a 500-yard radius of any anchored LNGC vessel located in the waters of Broad Sound bounded by a line starting at position 42°25′ N, 070°58′ W; then running southeast to position 42°22′ N, 070°56′ W; then running east to position 42°22′ N, 070°50′ W; then running north to position 42°25' N, 070°50' W; then running west back to the starting point (NAD 83).

(3) *Vessels moored at the Distrigas LNGfacility.* All waters within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 and § 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Boston, or his authorized representative.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Dated: June 11, 2002.

B.M. Salerno,

Captain, Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–18920 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–2002–12876]

Port Access Routes Study; In the Approaches to Chesapeake Bay, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Routes Study (PARS) to evaluate the continued applicability of and the need for modifications to current vessel routing measures or the creation of new vessel routing measures in the approaches to Chesapeake Bay, Virginia. The goal of the study is to help reduce the risk of marine casualties and increase vessel traffic management efficiency in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must reach the Docket Management Facility on or before September 24, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2002–12876), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call Lieutenant Junior Grade Anne Grabins, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757–398–6559, e-mail *Agrabins@lantd5.uscg.mil;* or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0574, e-mail *Gdetweiler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice of study (USCG–2002–12876), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meeting

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

Definitions

The following definitions are of terms we may use during the Port Access Routes Study (PARS). We include them here for those who are unfamiliar with these terms and their abbreviations.

Area to be avoided (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

Deep-water route is a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

Inshore traffic zone is a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specifically examined to ensure so far as possible that it is free of dangers and along which ships are advised to navigate.

Regulated navigation area (RNA) is a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout is a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by

moving in a counterclockwise direction around the separation point or zone.

Separation zone or *separation line* means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic separation scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route is a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Port Access Route Study Requirements. Under the Ports and Waterways Safety Act (PWSA)(33 U.S.C. 1223(c)), the Secretary of Transportation may designate necessary fairways and TSS's to provide safe access routes for vessels proceeding to and from U.S. ports. The Secretary's authority to make these designations was delegated to the Commandant, U.S. Coast Guard, in title 49 of the Code of Federal Regulations, 49 CFR 1.46. The designation of fairways and TSS's recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of port access routes before establishing or adjusting fairways or TSS's. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

Port access route study. The approaches to the Chesapeake Bay, VA, were last studied in 1989, and the final results were published in the **Federal Register** on July 13, 1989 (54 FR 29627). The study primarily examined the Southern Approach to Chesapeake Bay to accommodate vessels requiring a deep-water route. The PARS concluded that the existing Eastern Approach and Precautionary Area should remain unchanged, and it proposed the creation of the current deep-water route of the Southern Approach. A final rule, entitled ''Traffic Separation Scheme; In The Approaches to Cheasapeake Bay'' was published April 28, 1994 (59 FR 21935).

Why is a new port access route study necessary? Recent National Oceanic and Atmospheric Administration (NOAA) hydrographic data from a survey conducted April 12–17, 2001, indicate that Nautilus Shoal, bordering the northern edge of the Eastern Approach to Chesapeake Bay, is slowly moving southward and is encroaching the inbound traffic lane, which is limiting the use of this traffic lane to those vessels with drafts less than 27 feet (8.2 meters). This slow, continuous southward movement of Nautilus Shoal has spawned the need to evaluate the current location of the Eastern Approach and to determine if there is a different location that will better accommodate vessels that use this route to access Chesapeake Bay.

Based on potential changes to the Eastern Approach, it requires us to also study the Southern Approach to Chesapeake Bay. Therefore, we will study all the data concerning vessel movements in the Southern Approach to determine if modifications are needed for this approach as well.

Timeline, study area, and process of this PARS. The Fifth Coast Guard District will conduct this PARS to determine the need to modify existing routing measures and the effects of potential modifications in the study area. The study will begin immediately and we anticipate the study will take 6 to 12 months to complete.

The study area will encompass the area bounded by a line connecting the following geographic points (All coordinates are NAD 1983):

Latitude	Longitude
37°00.00′ N	075°56.00′ W
37°00.00′ N	075°40.00′ W
36°45.00′ N	075°40.00′ W
36°45.00′ N	075°56.00′ W

The study area encompasses the Eastern and Southern approaches to Chesapeake Bay used by commercial and public vessels.

As part of this study, we will consider previous studies, analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and affects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate continued applicability of existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and vessel traffic management efficiency. Study recommendations may lead to future rulemakings or appropriate international agreements.

Potential Study Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will identify any problems and appropriate solutions. The study may recommend that we—

- Maintain the current vessel routing measures;
- Disestablish the Eastern Approach TSS;
- Relocate the Eastern Approach TSS to the south of its current location;
- Modify the Southern Approach as necessary;
- Establish an Area to Be Avoided (ATBA) in shallow areas where the risk of grounding is present;
- Disestablish Chesapeake Light; and
- Replace Chesapeake Light with a lighted buoy or a smaller structure.

Questions

To help us conduct the port access route study, we request comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under Request for Comments above.

1. What navigational hazards do vessels operating in the study area face? Please describe.

2. Are there strains on the current vessel routing system (increasing traffic density, for example)? If so, please describe.

3. Are modifications to existing vessel routing measures needed to address hazards and strains and improve traffic management efficiency in the study area? Why or why not? If so, what measures should the study of port access routes address for potential implementation?

4. What costs and benefits are associated with the measures listed as potential study recommendations? What measures do you think are most cost-effective?

5. What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

Dated: July 16, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection

[FR Doc. 02–18914 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MN72–7297b; FRL–7251–4]

Approval and Promulgation of Implementation Plans; Minnesota, and Designation of Areas for Air Quality Planning Purposes; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve the State of Minnesota's request to redesignate the Saint Paul, Ramsey County, Minnesota primary particulate matter nonattainment area to attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). In conjunction with this action, EPA is also proposing to approve the maintenance plan for the Ramsey County PM nonattainment area, which was submitted to ensure that attainment of the NAAQS will be maintained. The Minnesota Pollution Control Agency submitted the redesignation request and maintenance plan on June 20, 2002. In the final rules section of this **Federal Register**, we are approving these actions as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse written comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 26, 2002.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: July 12, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–18865 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–6012–N2]

RIN 0938–AL13

Medicare Program; Establishment of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics; Meeting Announcement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meetings.

SUMMARY: This notice announces the establishment of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. On June 17, 2002, the Secretary signed the charter that established the committee.

The purpose of this committee is to advise us on developing a proposed rule that would establish special payment provisions and requirements for suppliers of prosthetics and certain custom-fabricated orthotics under the Medicare program. The committee consists of representatives of interested parties that are likely to be significantly affected by the proposed rule.

This notice also announces the dates and locations for the first and second meetings in accordance with section 10(a) of the Federal Advisory Committee Act. These meetings are open to the public.

DATES: The first meeting of the advisory committee is scheduled for October 1 through October 3, 2002 from 9 a.m. until 5 p.m. e.s.t. The second meeting is scheduled for October 29 through October 31, 2002 from 9 a.m. until 5 p.m. e.s.t. Subsequent meetings will be announced in the **Federal Register**.

ADDRESSES: Both meetings will be held at the Hilton Pikesville at 1726 Reisterstown Road, Baltimore, MD 21208 (Telephone 410–653–1100). Subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT: Kathryn Cox, 410–786–5954 (General inquiries concerning prosthetics and custom-fabricated orthotics and additional meeting information), Centers for Medicare & Medicaid Services (CMS), 7500 Security Blvd, Baltimore MD 21244; or Lynn Sylvester, 202–606–9140, Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427; or Ira Lobel, 518–431–0130, Federal Mediation and Conciliation Services, 1 Clinton Square, Room 952, Albany, NY 12207.

SUPPLEMENTARY INFORMATION:

Background

Section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub.L. 106–554, enacted on December 21, 2000) mandated the establishment of a negotiated rulemaking committee in accordance with the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561–570. The purpose of the committee is to advise us on the content of a proposed rule regarding the special payment provisions and requirements set forth in section 427 of BIPA for prosthetics and certain custom-fabricated orthotics. The committee will also establish an initial list of those custom-fabricated orthotic items that will be subject to the new rulemaking. No item may be included on the list unless the item is individually fabricated for the patient using a positive model of the patient.

Through the use of face-to-face negotiations, the committee will attempt

to reach consensus on the substance of the proposed rule. If consensus is reached, the committee will transmit to us a report containing required information for developing a proposed rule and we will use the report as the basis for the proposed rule. The committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, arriving at a consensus, and recommending the text and content of the proposed regulation.

Facilitators

We will be using the services of facilitators from the Federal Mediation and Conciliation Services, specifically, Commissioner Lynn Sylvester and Commissioner Ira B. Lobel.

Agendas for the Public Meetings

At the initial 3-day meeting on October 1–3, 2002, the facilitators will offer an overview of the negotiated rulemaking process, the obligations of committee members, and the substantive issues to be resolved by the committee. The facilitators will conduct a brief training session on negotiation techniques.

The facilitators will propose ground rules for the negotiation committee. These are the procedural rules that the committee will adopt at its first meeting. The facilitators will distribute proposed ground rules, which will address, among other things—

1. The composition of the Committee,
2. The use of alternates;
3. The definition of consensus;
4. The procedures for public participation;
5. Preparation of meeting minutes; and
6. The essential commitment of the members to attend the meetings and participate meaningfully.

The proposed ground rules will emphasize the importance of the members' communication with their constituencies, including keeping them abreast of the negotiations. The proposed ground rules will also address ''bargaining'' in good faith to reach consensus.

At the October 29 through October 31 meeting, the committee will begin to discuss the following issues:

- What and who should be covered by the rule?
- How and by whom will practitioners be certified, credentialed, or licensed?
- What are the special needs that must be addressed, such as dealing with rural areas?
- How will the program be implemented?

This list of issues is preliminary in nature and will serve as the basis to begin the negotiations.

Public Participation

All interested parties are invited to attend both public meetings. No advance registration is required. Seating will be available on a first-come, first-served basis.

Interested parties may comment on the proposed meeting agendas, submit written statements to the Committee regarding substantive issues, and request an opportunity to make a 5-minute oral presentation to the Committee. The Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless the facilitators have specifically approved these questions. The number of oral presentations may be limited by the time available.

The deadline for submitting oral presentation requests and comments on the proposed agenda for the October 1 through 3 meeting is 12 noon on September 3, 2002. The deadline for submitting such requests and comments regarding the October 29 through October 31 meeting is 12 noon on October 1, 2002. To assure distribution of written statements to the Committee members before a particular meeting, we encourage interested parties to submit all such statements by the relevant deadline for oral presentation requests and agenda comments. Agenda comments, oral presentation requests, and substantive written statements may be mailed to the following address: Federal Mediation and Conciliation Services, 2100 K Street, NW., Washington, DC 20427, Attention: Lynn Sylvester, or call Lynn Sylvester at (202) 606–9140.

Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Kathryn Cox at the e-mail address specified above or call (410) 786–5954 at least 10 days before the meeting.

Meetings

Subsequent meetings will be held as necessary, although we anticipate that a minimum of six meetings (one meeting per month consisting of 2 or 3 day sessions) will be held. The committee will decide on the dates for the remaining meetings. We will publish notices of future meetings in the **Federal Register**. All future meetings will be open to the public without advance registration.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–18614 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1199–P]

RIN 0938–AL11

Medicare Program; Electronic Submission of Cost Reports

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 42 CFR part 413 by requiring that, for cost reporting periods ending on or after December 31, 2002, all hospices, organ procurement organizations, rural health clinics, federally qualified health centers, community mental health centers, and end-stage renal disease facilities must submit cost reports currently required under the Medicare regulations in a standardized electronic format. This rule also allows a delay or waiver of this requirement when implementation would result in financial hardship for a provider. The provisions of this rule allow for more accurate preparation and more efficient processing of cost reports.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 24, 2002.

ADDRESSES: In commenting, please refer to file code CMS–1199–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–1199–P, P.O. Box 8014, Baltimore, MD 21244–8014.

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 (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(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: Tom Talbott, (410) 786–4592.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call (410) 786–7197.

I. Background

Generally, under the Medicare program, hospices, organ procurement organizations, rural health clinics (RHCs), federally qualified health centers (FQHCs), community mental health centers (CMHCs), and end-stage renal disease (ESRD) facilities are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Sections 1815(a) and 1833(e) of the Social Security Act (the Act) provide that no payments will be made to a provider unless it has furnished the information, requested by the Secretary of the Department of Health and Human Services (the Secretary), needed to determine the amount of payments due the provider. In general, providers submit this information through cost reports that cover a 12-month period. Rules governing the submission of cost reports are set forth in §§ 413.20 and 413.24 of the Code of Federal Regulations (CFR).

Under § 413.20(a), all providers participating in the Medicare program are required to maintain sufficient financial records and statistical data for proper determination of costs payable under the program. In addition, providers must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the health care industry and related fields. Under §§ 413.20(b) and 413.24(f), providers are required to submit cost reports annually, with the reporting period based on the provider's accounting year. Additionally, under § 412.52, all hospitals participating in the prospective payment system must meet cost reporting requirements set forth at §§ 413.20 and 413.24.

Section 1886(f)(l)(B)(i) of the Act requires the Secretary to establish a standardized electronic cost reporting system for all hospitals participating in the Medicare program. This provision was effective for hospital cost reporting periods beginning on or after October 1, 1989. On January 2, 1997, we revised our regulations at § 413.24(f)(4)(ii) to extend the electronic cost reporting requirement to skilled nursing facilities (SNFs) and home health agencies (62 FR 26–31).

The required cost reports must be electronically transmitted to the intermediary in American Standard Code for Information Interchange (ASCII) format. In addition to the electronic file, hospitals, SNFs, and HHAs were initially required to submit a hard copy of the full cost report. We later revised our regulations in § 413.24(f)(4)(iv) to state that providers were required to submit, instead, a hard copy of a one-page settlement summary, a statement of certain worksheet totals found in the electronic file, and a statement signed by the provider's administrator or chief financial officer certifying the accuracy of the electronic file. In order to preserve the integrity of the electronic file, in the January 1997 final rule we specified procedures regarding the processing of the electronic cost report once it is submitted to the intermediary (62 FR 27).

II. Provisions of the Proposed Regulations

In this rule, we propose to apply the current hospital, SNFs, and HHAs electronic cost reporting requirements to hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities with the exception that, for the first 2 years, the hard copy of the cost report must be submitted with the electronic cost report. Over that 2-year period, the hard copy will continue to be the official copy. We believe that the use of electronically prepared cost reports will be beneficial for hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities because the cost reporting software for these reports will virtually eliminate computational errors and substantially reduce preparation time. Moreover, the use of cost reporting software will save time whenever the provider needs to change individual entries in a cost report.

In this rule we also propose that a hospice, organ procurement organization, RHC, FQHC, CMHC, or ESRD facilities may submit a written request for a waiver or a delay of these requirements if it believes that implementation of the electronic submission requirement would cause a financial hardship. Consistent with the existing regulations (*see* § 413.24), we are continuing to allow providers with low or no Medicare utilization to request a waiver of electronic cost reporting.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA 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 an information collection should be approved by OMB, section 3506(c)(2)(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.
- We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 413.24—Adequate Cost Data and Cost Finding

Paragraph (f)(4)(ii) requires that, for cost periods ending on or after December 31, 2002, hospices, organ procurement organizations, RHCs,

FQHCs, CMHCs, and ESRD facilities, submit cost reports to fiscal intermediaries in a standardized electronic format readable by the fiscal intermediary's automated system. The electronic file must contain the input data required to complete the cost report and to pass specified edits. Paragraph (f)(4)(iii) requires that the fiscal intermediary make a ''working copy'' of the as-filed electronic cost reports filed by these providers to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, and final settlement). Paragraph (f)(4)(iv) requires that, for cost reporting periods after December 31, 2002, hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. During a transition period (first two cost-reporting periods on or after December 31, 2002), hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities must submit a hard copy of the completed cost report forms in addition to the electronic file.

We believe the burden associated with these provisions will actually reduce the amount of time currently spent on preparing and collating hardcopy documents. Because we are unsure how much time will be saved for the various providers, however, we are requesting comments on these provisions so that we can more accurately determine how much time may be saved.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, DCES, SSG, ATTN.: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Brenda Aguilar, CMS Desk Officer.

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

We have examined the impacts of this rule as required by Executive Order 12866 (September 19, 1980 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 rule is not considered to have a significant economic impact on hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities, like hospitals, and, therefore, is not considered a major rule. There are no requirements for hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities to initiate new processes of care, and reporting; to increase the amount of time spent on providing or documenting patient care services; or to purchase computer software.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having annual receipts of $5 million to $25 million or less annually (See 65 FR 69432). For purposes of the RFA, all providers and small businesses that distribute cost-report software to providers are considered small entities. Our intermediaries are not considered small entities for the purposes of the RFA. Individuals and States are not included in the definition of small entities.

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.

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 will 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.

As stated above, under §§ 413.20(b) and 413.24(f), providers are required to submit cost reports annually, with reporting periods based on the provider's accounting year. This proposed rule would require hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities, like hospitals, SNFs and HHAs, to submit their Medicare cost reports in a standardized electronic format. We anticipate that this requirement would take effect for cost reporting periods ending on or after December 31, 2002, meaning that the first electronic cost reports would be due May 31, 2003.

Currently, approximately 55 percent of all hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities submit a hard copy of an electronically prepared cost report to the intermediary. We believe that the provisions of this proposed rule would have little or no effect on these providers, except to reduce the time involved in copying and collating a hard copy of the report for intermediaries. Under this proposed rule, instead of submitting a complete hard copy of the report, providers would be required to submit only hard copies of a settlement summary, statement of certain worksheet totals, and a statement signed by the administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. In addition to the 55 percent of providers that currently use electronic cost reporting, this rule would not affect those providers that do not file a full cost report and, as stated above, would not be required to submit cost reports electronically.

This proposed rule may have an impact on those providers who do not prepare electronic cost reports, some of whom may have to purchase computer equipment, obtain the necessary software, and train staff to use the software. However, as discussed below, we believe that the potential impact of this proposed rule on those providers who do not prepare electronic cost reports would be insignificant.

First, a small number of the 45 percent of providers that do not submit electronic cost reports may have to

purchase computer equipment to comply with the provisions of this proposed rule. These providers are generally owned and operated by one or two individuals and are often located in rural areas. They include approximately 1500 RHCs and 1500 FQHCs. We estimate that 1350 of the 3000 RHCs and FQHCs may not have the necessary computer equipment. We believe, however, that most providers already have access to computer equipment, which they are now using for internal record keeping purposes, as well as for submitting electronically generated bills to their fiscal intermediaries, for example. Thus, we do not believe that obtaining computer equipment would be a major obstacle to electronic cost reporting for most providers. For those providers that would have to purchase computer equipment, we note that, in accordance with current regulations governing payment of provider costs, we would pay for the cost of the equipment as an overhead cost. Rural health clinics and FQHCs would be reimbursed subject to a payment limit; organ procurement organizations reimbursed based on costs; hospices reimbursed according to fee schedule; ESRDs paid a composite rate, and CMHCs would be reimbursed through a blend of prospective payment (PPS) and cost.

We recognize that a potential cost for providers that do not submit electronic cost reports would be that of training staff to use the software. Since most hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities currently use computers, we do not believe that training staff to use the new software would impose a large burden on providers. An additional cost would be the cost of the software offered by commercial vendors. However, providers could eliminate this cost by obtaining the necessary software from us, free of charge. In those instances when these requirements may cause hardship, a waiver can be granted.

The requirement that hospitals submit cost reports in a standardized electronic format has been in place since October 1989. Since that time, the accuracy of cost reports has increased and we have received very few requests for waivers. Additionally, we have not received any comments from the hospital industry indicating that the use of electronic cost reporting is overly burdensome. We believe that electronic cost reporting would be equally effective for hospices, organ procurement organizations, RHCs, FQHCs, CMHCs, and ESRD facilities, with the benefits (such as increased accuracy and decreased preparation time) outweighing the costs of implementation for most providers. We solicit comments on the potential benefits and implementation costs of these rules for all providers.

Section 202 of the Unfunded Mandate 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, that exceeds the inflation-adjusted threshold of $110 million. This rule does not impose any costs that would exceed the $110 million threshold on the governments mentioned, or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this proposed rule and have determined that this rule will not have a negative impact on the rights, rules, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

2. Section 413.24 is amended by revising existing paragraphs (f)(4)(i) through (f)(4)(v) to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(f) *Cost reports.* * * *

(4) *Electronic submission of cost reports.* (i) As used in this paragraph, ''provider'' means a hospital, skilled nursing facility, home health agency, hospice, organ procurement organization, rural health clinic, federally qualified health clinic, community mental health center, or end-stage renal disease facility.

(ii) Effective for cost reporting periods beginning on or after October 1, 1989 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, and cost reporting periods ending on December 31, 2002 for hospices, organ procurement organizations, rural health clinics, federally qualified health centers, community mental health centers, and end-stage renal disease facilities, a provider is required to submit cost reports in a standardized electronic format. The provider's electronic program must be capable of producing the CMS standardized output file in a form that can be read by the fiscal intermediary's automated system. This electronic file, which must contain the input data required to complete the cost report and to pass specified edits, must be forwarded to the fiscal intermediary for processing through its system.

(iii) The fiscal intermediary stores the provider's as-filed electronic cost report and may not alter that file for any reason. The fiscal intermediary makes a ''working copy'' of the as-filed electronic cost report to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, and final settlement). The provider's electronic program must be able to disclose if any changes have been made to the as-filed electronic cost report after acceptance by the intermediary. If the as-filed electronic cost report does not pass all specified edits, the fiscal intermediary must return it to the provider for correction. For purposes of the requirements in paragraph (f)(2) of this section concerning due dates, an electronic cost report is not considered to be filed until it is accepted by the intermediary.

(iv) Effective for cost reporting periods ending on or after September 30, 1994 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, and cost reporting periods ending on or after December 31, 2002 for hospices, organ procurement organizations, rural health clinics, federally qualified health centers, community mental health centers, and end-stage renal disease facilities, a provider must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the

accuracy of the electronic file or the manually prepared cost report. During a transition period (first two cost-reporting periods on or after December 31, 2002), hospices, organ procurement organizations, rural health clinics, federally qualified health centers, community mental health centers, and end-stage renal disease facilities must submit a hard copy of the completed cost report forms in addition to the electronic file. The following statement must immediately precede the dated signature of the provider's administrator or chief financial officer:

I hereby certify that I have read the above certification statement and that I have examined the accompanying electronically filed or manually submitted the cost report and the Balance Sheet Statement of Revenue and Expenses prepared by _____ (Provider Name(s) and Number(s)) for the cost reporting period beginning ___ and ending ___ and that to the best of my knowledge and belief, this report and statement are true, correct, complete and prepared from the books and records of the provider in accordance with applicable instructions, except as noted. I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

(v) A provider may request a delay or waiver of the electronic submission requirement in paragraph (f)(4)(ii) of this section if this requirement would cause a financial hardship or if the provider qualifies as a low or no Medicare utilization provider. The provider must submit a written request for delay or waiver with necessary supporting documentation to its intermediary no later than 30 days after the end of its cost reporting period. The intermediary reviews the request and forwards it, with a recommendation for approval or denial, to CMS central office within 30 days of receipt of the request. CMS central office either approves or denies the request and notifies the intermediary within 60 days of receipt of the request.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 4, 2002.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 29, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–18982 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–01–9832]

RIN 2137–AD59

Pipeline Safety: Hazardous Liquid Pipeline Operator Annual Report Form

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) would require hazardous liquid pipeline operators to submit an annual report (proposed form RSPA F7000–1.1). The report form asks for information that the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) does not currently collect, such as: breakout tank location and capacity; hazardous liquid pipeline mileage by State, diameter and decade installed. The report will be due March 15 of each year for the previous calendar year, aligning with the annual reporting schedule for natural gas pipeline operators. RSPA/OPS will use information from the report to more effectively compile national statistics on system inventory; analyze accidents; identify safety problems and potential solutions; and target inspections. The proposed form asks for information similar to information RSPA/OPS currently collects for natural gas pipelines. The proposed information collection is part of RSPA's/OPS's overall strategy for improving the quality of pipeline statistics and addresses a longstanding data gap in hazardous liquid pipeline inventory information.

DATES: Comments on this NPRM must be received on or before September 24, 2002.

ADDRESSES: You may submit written comments by mail or in person by delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Or, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov. See* the **SUPPLEMENTARY INFORMATION** section for additional filing information.

FOR FURTHER INFORMATION CONTACT: Roger Little by phone at (202)366–4569, by e-mail at *roger.little@rspa.dot.gov,* or by mail at the Office of Pipeline Safety, Room 7128, 400 7th St. SW., Washington, DC, 20590, regarding the subject matter of this notice or to access comments in the docket.

SUPPLEMENTARY INFORMATION:

Filing Information, Electronic Access, and General Program Information

The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. All comments should identify the docket number of this notice, RSPA–01–9832. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. To file written comments electronically, after logging onto *http://dms.dot.gov,* click on ''Electronic Submission'' and follow the instructions. You can read comments and other material in the docket at this Web address: *http://dms.dot.gov.* General information about our pipeline safety program is available at *http://ops.dot.gov.*

Background

RSPA Pipeline Safety Mission

RSPA's/OPS's mission is to ensure the safe, reliable, and environmentally sound operation of the nation's approximately 154 thousand miles of hazardous liquid pipelines. RSPA/OPS shares responsibility for inspecting and overseeing the nation's pipelines with State pipeline safety offices. Both Federal and State regulators depend on accident reports submitted by pipeline companies to manage inspection programs and to identify trends in hazardous liquid pipeline safety. In recent years, the U.S. Congress, the National Transportation Safety Board (NTSB) and the DOT's Office of the Inspector General (OIG) have urged RSPA/OPS to improve the quality of accident data required to be submitted by hazardous liquid pipeline operators and to seek inventory information sufficient for trending the accident data. RSPA/OPS revised hazardous liquid accident reporting requirements on January 8, 2002 (67 FR 831) as part of the strategy to improve pipeline

accident reporting. The proposed annual report form will provide information that will allow us to characterize the hazardous liquid pipeline infrastructure by decade installed, diameter, material, percentage able to accommodate internal testing devices, percentage tested by hydrotesting or other internal inspection technology, and other criteria needed by Federal and State pipeline safety offices and other interested parties.

Pipeline Safety Data

RSPA/OPS maintains a hazardous liquid pipeline accident database that it uses to identify safety issues and to target risk-based inspections of hazardous liquid pipeline facilities. RSPA/OPS collects hazardous liquid pipeline accident information on RSPA Form F7000–1 Accident Report—Hazardous Liquid Pipelines. This form has been in use since 1970, and has been revised twice; once in 1984 and again on January 8, 2002. The Accident Report form does not, however, collect inventory information necessary for trending the accident information or for determining the extent and type of hazardous liquid pipelines in operation in the United States.

NTSB Recommendation

In its special investigation report PB96–917002 (January 23, 1996), the National Transportation Safety Board (NTSB) issued recommendation P–96–1 which directed RSPA/OPS to develop a comprehensive plan for the collection and use of gas and hazardous liquid pipeline accident data that details the type and extent of data to be collected, to provide RSPA/OPS with the capability to perform methodologically sound accident trend analysis and evaluations of pipeline operator performance using normalized accident data.

The process of making elements of data comparable for comparison purposes (as, for example, in finding a common denominator) is known as ''normalizing'' the data.

Congressional Recommendations

Recent pipeline accidents focused attention of the regulators, Congress, the media, and the public on the need for better pipeline safety information. Congress advised RSPA/OPS to take quick action to improve the quantity, quality, and usefulness of safety information to better perform its safety mission.

Industry Recognition of the Need for Better Information

Joint Industry/State/Federal Data Team

RSPA/OPS has worked jointly with an industry/State/Federal team since 1997 to examine the need for improved hazardous liquid pipeline accident data. The team determined that the best way to address accident reporting deficiencies was to adopt the accident causes proposed by the American Society of Mechanical Engineers (ASME) B31.4 committee and to collect the inventory information needed to normalize the data. The team determined that the American Petroleum Institute (API) could develop and collect additional hazardous liquid pipeline data using a voluntary reporting system. API developed the data collection scheme in a system known as the Pipeline Performance Tracking Initiative (PPTI) and has been collecting information since January 1, 1999. The PPTI information collection is voluntary, and may not be sufficiently detailed for State and Federal government safety and environmental regulation purposes. Moreover, companies provide the data anonymously. RSPA/OPS and State pipeline safety offices cannot evaluate an individual company's performance unless the company identifies itself and its pipe inventory.

Standardization of Accident Data Across Industry

RSPA/OPS is implementing some of the recommendations of the NTSB and Congress through this rulemaking. Although RSPA/OPS has never collected inventory information from hazardous liquid pipeline operators, RSPA/OPS has been collecting this information from natural gas pipeline operators since the 1970s. In a 1983 **Federal Register** notice (48 FR 13450), RSPA/OPS solicited comments on proposed revisions to certain reports, including annual reports for gas pipeline operators. In that notice, RSPA/OPS said: ''[o]n the suggested annual forms, consistency of column titles will enable cross comparison of data on a larger scale and will present a workable method to facilitate analysis of possible safety problems. Therefore, in light of the size of the nationwide pipeline system and the importance of the [OPS] role in developing and enforcing an effective pipeline safety program, the annual report represents the foundation for conducting analyses of the pipeline data.''

RSPA/OPS believes that this hazardous liquid annual report information collection also represents the foundation for conducting analyses of the hazardous liquid pipeline accident data. RSPA/OPS acknowledges the need for consistent pipeline information for both natural gas and hazardous liquid pipelines. The resulting information will allow RSPA/OPS to standardize pipeline safety statistics for most types of pipelines, which will make data analysis more efficient and meaningful.

RSPA/OPS utilizes the information it receives from gas transmission and distribution annual report and incident forms in many ways. For example, RSPA/OPS uses the annual report information to calculate corrosion leaks per mile, per company. This information may be used along with other information to prioritize pipeline inspections. RSPA/OPS can also track reductions in the mileage of cast iron pipe. RSPA/OPS can investigate whether the use of plastic pipe correlates to fewer accidents, especially in natural gas distribution systems.

New by-state reporting requirements for natural gas transmission annual reporting will allow us to provide State pipeline safety offices, State governors and State legislators with better information on pipeline mileage under their jurisdiction. Leak rates per mile per company can be tallied and used in evaluation of pipeline operator safety performance. This data will enable individual companies to measure the effectiveness of their safety practices. We need national data to help determine whether pipelines are more or less safe as a result of pipeline system improvements. These are just some of the benefits of receiving annual report information from natural gas pipeline companies. RSPA/OPS anticipates similar improvements in hazardous liquid safety information from use of the proposed form.

The proposed form is substantially similar to the Annual Report form for gas transmission and gathering systems, (Form RSPA F7100–2.1). This form was updated on August 8, 2001. Similarity of forms translates into improved analytical capability for both the gas and hazardous liquid pipeline industries. RSPA/OPS proposes to name the new Hazardous Liquid Pipeline Operator Annual Report form ''RSPA F7000–1.1 Hazardous Liquid Pipeline Operator Annual Report form.'' RSPA/OPS proposes to collect information on the form annually by March 15 for the preceding calendar year. Operators will be able to submit the form in hard copy to the RSPA/OPS Information Resources Manager, at the same address for filing hazardous liquid accident reports; or, by electronic submission on the RSPA/OPS

Online Data Entry System, a World-Wide-Web-based reporting system available via the RSPA/OPS Internet Home Page at *http://ops.dot.gov.*

RSPA/OPS includes the proposed hazardous liquid pipeline operator annual report form and instructions with this notice and invites comments on them.

What Information Does RSPA/OPS Propose To Collect on the Annual Report Form?

The proposed annual report form asks whether an operator's system carries crude oil, highly volatile liquid (HVL), refined petroleum product, or other hazardous liquid (i.e., anhydrous ammonia and carbon dioxide). The form also asks for total miles of pipeline in each State, in intrastate and interstate commerce; cathodically protected versus bare steel pipeline; steel pipeline by decade and diameter; electric resistance welded (ERW) pipeline by decade and weld type; and regulated and unregulated gathering lines. In addition, the form would require reporting of the percentage of systems that have been internally inspected; percentage of transmission systems in a rural area (the definition of ''rural area'' is in 49 CFR 195.2); information on breakout tanks; an additional report form for each state within which the system operates; and an additional report form for offshore mileage.

Why Does RSPA/OPS Need an Annual Report Form for Hazardous Liquid Operators?

Normalizing the Data

RSPA/OPS will be able to use data from the annual report form to compute a leak rate per mile of pipeline and other statistics. Armed with better statistics, RSPA/OPS will be able to better understand safety trends and to focus inspection efforts. To illustrate, let's consider what is needed to compare the corrosion leak frequency of two companies. Suppose that Company A and Company B are two companies with the same number of corrosion leaks over a ten year period. From the hazardous liquid accident report we can determine the frequency (number) of leaks that occur as a result of corrosion. Suppose that both Company A and Company B reported 25 corrosion leaks in the last decade in the same state. The number of leaks that each company had within the state in the last decade is insufficient information to determine whether Company A or Company B has the higher rate of corrosion.

To determine which of the two companies has the higher rate of corrosion within the state, we must compute the leak rate per mile for each of the companies. This computation requires additional information that RSPA/OPS does not currently collect and that the proposed hazardous liquid annual report form would supply, namely, total miles of pipeline installed for each of the companies within the state. Assume, for our example, that Company A operates 500 miles of pipeline in the state while Company B operates 2000 miles of pipeline in the state. Company A's corrosion leak rate for the decade in the state computes to 25 leaks /500 miles /10 years, or .005 leaks per mile per year. Company B's corrosion leak rate for the decade in the state computes to 25 leaks/2000 miles /10 years, or .00125 leaks per mile per year. Company A is therefore 4 times more likely to have a corrosion leak in the state than Company B. The above analysis is an exercise in ''normalizing'' the data. Comparisons such as the one above are useful in safety analyses. The proposed form requests information that will make such comparisons possible.

Other Uses of the Data

RSPA/OPS needs accurate, meaningful pipeline information for: general trending of pipeline safety data; risk assessment; scheduling standard safety inspections; deciding which pipelines need replacement versus rehabilitation; comparing individual operator performance with industry performance; cost-benefit analysis; regulatory development; monitoring industry performance and regulatory compliance; and RSPA/OPS resource allocation.

State pipeline safety programs with hazardous liquid pipeline safety responsibility also need the information for these purposes. Currently, the information collected from the gas pipeline operator annual report (available on the RSPA/OPS website) is widely used by third parties, including State governors, Congress, metropolitan planners, pipeline research engineers, industry safety experts, the media, and the public.

The proposed annual report form will collect data that hazardous liquid pipeline operators can use to measure their performance against other operators and the industry. We believe that having national minimum standards for inventory information will assist companies in their development of operational, maintenance, and other procedural documentation. Improved inventory record-keeping will yield better data for pipeline safety research, the goals of which are safer pipelines and a cleaner environment.

What Alternatives to an Annual Report Form for Hazardous Liquid Operators Did RSPA/OPS Consider?

RSPA/OPS considered collecting the annual report information through API's already established PPTI. Because participation in PPTI is voluntary and anonymous, RSPA/OPS determined that this option was inadequate. PPTI data would not meet the needs of RSPA/OPS, the States, and the public for complete information on the safety and environmental performance of pipeline facilities. RSPA/OPS needs to collect this information because it is not otherwise available.

RSPA/OPS also considered collecting the information via the National Pipeline Mapping System (NPMS). Practical problems arose in attempting to integrate annual report information into the NPMS database. Submission of inventory information to NPMS would have to be on a per-pipeline-segment basis, greatly increasing the labor and costs for NPMS submissions. For example, if we were to collect pipeline diameter information via NPMS, each company would have to provide pipeline segment information each time the operator changed the diameter of the pipe. Currently pipeline diameter is an optional reporting item on NPMS.

Finally, unresolved issues regarding frequency of NPMS data submission, standards for accuracy of submission, and its voluntary nature render NPMS an imperfect vehicle for collecting hazardous liquid pipeline inventory data.

Rulemaking Analyses

Executive Order 12866 and DOT Policies and Procedures

RSPA/OPS does not consider this NPRM to be a significant regulatory action under Section 3(f) of Executive Order 12866. RSPA/OPS also does not consider this NPRM to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

A copy of the Draft Regulatory Evaluation is available for review in the docket. This section summarizes the findings of the draft regulatory evaluation. This NPRM is intended to supply data necessary for the proper analysis of hazardous liquid pipeline safety issues.

This proposal amends the pipeline safety regulations by requiring hazardous liquid pipeline operators to annually report information on: pipe inventory by state, diameter, and decade of installation; information about breakout tank number and capacity; and other aspects of their pipeline systems.

Benefits

Hazardous liquid pipeline system inventory information is needed for: meaningful trending of hazardous liquid pipeline accident safety issues; risk assessment; recommendations regarding rehabilitation or replacement of pipeline segments; analysis of costs and benefits; and comparison of individual operator performance against industry performance. This safety information will be used by RSPA/OPS for daily decision making in RSPA's/OPS's assessment of pipeline risks, regulatory development, and programmatic resource allocation. RSPA/OPS also uses the information in monitoring industry performance and regulatory compliance, and for planning company standard safety inspections. States, local community planners, and emergency responders will benefit from having information about hazardous liquid pipeline systems for comparing local risks against the national level and for other purposes. Industry will ultimately benefit when RSPA/OPS establishes from the collected information a baseline measurement for pipeline company safety performance.

Costs

The form asks for information that should be readily available to the operator on the operator's databases. RSPA/OPS expects that ultimately the time required to complete the form will decrease as operators adjust their computerized systems to track the requested information. RSPA/OPS estimates it will take an operator 12 hours (246 fields × 3 minutes per field) to complete the form the first year and half as long (6 hours annually) in subsequent years. RSPA/OPS recognizes that where companies have merged with other companies, information about pipeline mileage by decade installed may not be available. The form provides a category labeled ''unknown'' in which an operator may estimate the decade the pipeline was installed.

Based on the number of participants in the NPMS, the number of hazardous liquid pipeline operators filing annual reports will be approximately 300.

RSPA/OPS estimated the hourly cost of the person completing the form at $40. The $40 figure was based on the U.S. Department of Labor's National Occupational Employment and Wage Earnings for 1999. According to that document, the hourly wage for a Transportation, Storage, and Distribution Manager (the closest category to a pipeline manager) was $26.03 per hour. The $26.03 figure was multiplied by 1.35 to account for fringe benefits ($26.03 × 1.35 = $35.14). RSPA/OPS added an inflation factor of 14% to account for inflation from 1999 to 2002 ($35.14 × 1.14 = $40.05).

RSPA/OPS estimates that it will take an operator about 12 hours to complete the form the first year it is in use. Based on an average cost of $40 per hour, the cost to industry of completing the form for the first year will be $144,000.00 (300 forms × 12 hours × $40 per hour = $144,000.00). Total hours expended by industry to complete the form in the first year will be 3,600 hours (300 forms × 12 hours = 3,600 hours).

After the first year, once company computer systems are adjusted to provide the information in the format requested, the total annual industry cost will be $72,000.00 (1,800 × $40 = $72,000.00). After the first year, total hours expended by industry to complete the form will be 1,800 hours (300 forms × 6 hours = 1,800 hours).

Conclusion

RSPA/OPS believes that the initial annual cost of $144,000.00 and ongoing annual cost of $72,000.00 annually is a relatively modest burden on the hazardous liquid pipeline industry. The benefits accruing to RSPA/OPS and the pipeline industry through the increased utility of the hazardous liquid accident data should easily outweigh this modest cost. The additional information will allow RSPA/OPS and the hazardous liquid pipeline industry to identify safety issues and trends, and allow operators to make changes to procedures and practices that will ultimately reduce pipeline accidents and improve pipeline safety.

Regulatory Flexibility Act

The NPRM's first year industry cost of $144,000.00, divided by the approximately 300 hazardous liquid pipeline operators, results in an average cost of $480.00 per operator. Subsequent annual costs to complete the form is approximately $240.00 per operator ($72,000.00 divided by 300 operators).

The Small Business Administration's (SBA) criteria for defining a small entity in the hazardous liquid pipeline industry is 1,500 employees, as specified in the North American Industry Classification System codes (486110—Pipeline Transportation of Crude Oil and 486910—Pipeline Transportation of Refined Petroleum Products). RSPA/OPS does not collect information on number of employees or revenues for pipeline operators. Such a collection would require OMB approval. RSPA/OPS nevertheless continues to seek information about the number of small pipeline operators from which to more fully determine impact on small entities (companies with less than 1,500 employees, counting employees of parent corporations). For several years RSPA/OPS has sought public comment from small hazardous liquid operators.

For the RSPA/OPS Hazardous Liquid Pipeline Accident Reporting Revisions Notice of Proposed Rulemaking (66 FR 15681; March 20, 2001), RSPA/OPS sought input from the public on the impact of the NPRM on small entities. No one responded to this request. The SBA Chief Counsel for Advocacy, however, made comments on behalf of small businesses. SBA asked how many hazardous liquid pipeline operators would RSPA/OPS characterize as small operators. RSPA/OPS solicited public comment from small operators in its recent rulemakings on pipeline integrity management. No comments from small hazardous liquid operators were forthcoming.

The hazardous liquid pipeline industry is a highly competitive, capital intensive industry which in recent years has seen many mergers and buyouts. If you are an operator of a small company, RSPA/OPS requests that you identify yourself to us to help us more accurately determine impact on small businesses of this and future rulemakings (see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections above for how to provide comments).

Although RSPA/OPS does not have information that can identify which companies are small businesses per SBA's criteria, the cost to be imposed by this rulemaking is very small. The average cost for all companies based on an estimated total impact of $72,000 annually is $240.00 per operator ($72,000/300 operators) with an initial first year cost of $480.00 per operator ($144,000/300 operators). We believe the benefits of this NPRM far outweigh this small per company cost.

Based on the small cost to companies of any size and to the industry at large of this NPRM, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this NPRM would not have a significant impact on a substantial number of small entities.

If you have any information that this conclusion about the impact on small entities is not correct, please provide that information to the public docket described in the **SUPPLEMENTARY INFORMATION** section.

Paperwork Reduction Act

This NPRM contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the DOT has submitted a copy of the Paperwork

Reduction Act Analysis to the Office of Management and Budget (OMB) for its review.

The approximately 300 hazardous liquid pipeline operators will be required to submit one report annually per company, or 300 reports annually. The total hour burden the first year will be 12 hours per operator. For the entire industry, the burden will be 3,600 hours (12 hours × 300 operators) costing $144,000.00 the first year ($40 per hour × 3,600 hours). Every year thereafter, the burden will be 6 hours per operator. For the entire industry, the burden will be 1800 hours (6 hours per operator × 300 operators = 1800 hours). The total annual cost after the first year is 1,800 hours × $40/hr = $72,000.00.

Organizations and individuals desiring to submit comments on the information collection should direct them to the addresses listed in the **ADDRESSES** section of the preamble. Also see the **SUPPLEMENTARY INFORMATION** section for how to submit comments. Comments must be sent within 60 days of the publication of this notice.

The OMB is specifically interested in the following issues concerning the information collection:

1. Evaluating whether the collection is necessary for the proper performance of the functions of the DOT, including whether the information would have a practical use;
2. Evaluating the accuracy of the DOT's estimate of the burden of the collection of information, including the validity of assumptions used;
3. Enhancing the quality, usefulness and clarity of the information to be collected; and
4. Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

The Paperwork Reduction Act of 1995 does not require a person to respond to a collection of information unless a valid OMB control number is displayed. The valid OMB control number for this information collection will be published in the **Federal Register** after it is approved by OMB. For more details, see the Paperwork Reduction Analysis available for copying and review in the public docket.

Executive Order 13175

The NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because the NPRM would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Unfunded Mandates Reform Act of 1995

This NPRM would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We have analyzed the NPRM for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the NPRM parallels present reporting requirements and practices for gas pipeline operators, we have preliminarily determined that the NPRM would not significantly affect the quality of the human environment. Generally, collection of information does not result in an environmental impact. A final determination on environmental impact will be made after the end of the comment period. If you disagree with our preliminary conclusion, please submit your comments to the docket.

Executive Order 13132

The NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). The NPRM does not propose any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

RSPA/OPS has determined that this NPRM does not constitute a significant energy action within the meaning of EO 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' This NPRM will not result in adverse effects on energy supply, distribution, or use.

Executive Order 13212

Because this NPRM is not an energy-related project, EO 13212, ''Actions to Expedite Energy-Related Projects,'' does not apply.

Executive Order 12630

This NPRM does not affect or potentially affect the use or value of real, personal, or intellectual property. Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' does not, therefore, apply to this NPRM.

List of Subjects in 49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA/OPS proposes to amend 49 CFR part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 would continue to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. The title to Subpart B would be revised to read as follows:

Subpart B—Annual, Accident, and Safety-Related Condition Reporting

3. Section 195.49 would be added to Subpart B to read as follows:

§ 195.49 Annual report.

Each operator of a hazardous liquid or carbon dioxide pipeline system shall submit an annual report for that system on DOT form RSPA F7000–1.1. This report must be submitted each year, not later than March 15, for the preceding calendar year.

Issued in Washington, DC on July 18, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

Instructions for Completing Form RSPA F 7100.2–1 (Rev. 11–2000)

Annual Report for Calendar Year YYYY Hazardous Liquid Pipeline Systems

General Instructions

All section references are to Title 49 of the Code of Federal Regulations.

Each hazardous liquid system operator with a total of 1 or more miles of pipeline is required to file an annual report. Complete a separate report for mileage for each state in which the operator's pipeline system operates.

The terms ''barrel'', ''breakout tank'', ''carbon dioxide'', ''gathering line'', ''intrastate'', ''interstate'', ''hazardous liquid'', ''highly volatile liquid (HVL)'',

''offshore'', ''outer continental shelf (OCS)'', ''specified minimum yield strength (SMYS)'' are defined in § 195.2. The term ''operator'' is defined in § 195.2 as a person who owns or operates pipeline facilities. For purposes of this report, the operator is further defined as the person (''person'' is defined in 49 CFR 195.2) who exercises substantial control over the operation of the pipeline.

Reporting requirements will be at *§ 195.49—Annual report,* Title 49 of the Code of Federal Regulations (CFR) Transportation of Hazardous Liquids by Pipeline upon completion of rulemaking. Annual reports must be submitted by March 15 for the preceding calendar year. Report Total miles of pipeline in the system at the end of the reporting year, including additions to the system during that year. Reports should be submitted to the address in § 195.58 (currently Information Resources Manager, Office of Pipeline Safety, Room 7128, 400 7th St. SW., Washington, DC.

If you have questions about the report or these instructions, or need copies of Form RSPA F 7000–1.1(01–03), please contact the Information Resources Manager, RSPA, Office of Pipeline Safety, at (202) 366–4569. Copies of the form and instructions are on the Office of Pipeline Safety home page, *http://ops.dot.gov* in the FORMs section of the ONLINE LIBRARY upon completion of rulemaking. Please type or print all entries.

Please round all mileage to the nearest mile. DO NOT USE DECIMALS OR FRACTIONS. Round decimals or fractions to the nearest whole number, e.g., ⅜ or 0.375 should be rounded down; ¾ or 0.75 should be rounded up; ½ or 0.5 should be rounded up. The entry for ''Total miles of pipe'' in Part B and Part C should be identical and reflect system totals. Note: the form requests reporting in miles of pipeline, not feet.

Make an entry in each block for which data is available. Estimate data if necessary. Try to avoid entering mileage in the Unknown columns if possible. We recognize that some companies may have very old pipe for which installation records may not exist. Enter estimate of the total of such mileage in the ''Pre-40 or UNKNOWN'' section of Part B: ''Miles of Pipe by Location/Protection/Decade''.

Specific Instructions

Enter the Calendar Year for which the report is being filed. Check Initial Report if this is the original filing for this calendar year. Check Supplemental Report if this is a follow-up to a previously filed report to amend or correct information. On Supplemental Reports, enter all information requested in Parts A and J, and only the new or revised information for the remainder of the form.

Enter *the State for which information is being reported.* An operator should submit a separate report for all hazardous liquid operations for each State in which it operates. A company may submit separate reports for subsidiaries or affiliate operations. Please do not report any pipeline facility more than once.

For System Type, check all boxes that apply.

Include petroleum gathering line mileage under crude oil systems.

Part A—Operator Information

Insert the operator name and address data. Enter the address where additional information can be found.

The operator's five digit identification number appears on the RSPA mailing label. If the person completing the report does not have the identification number, this information may be omitted.

Please adhere to definitions in Title 49 part 195 of the Code of Federal Regulations when reporting pipeline mileage.

Part B—Miles of Steel Pipe by Location/Protection/Decade

Coated means pipe coated with an effective hot or cold applied dielectric coating or wrapper.

Part F—Miles of Gathering Lines

Report mileage of regulated and unregulated gathering lines within each state. Report any and all mileage offshore in a separate report. Gathering lines are defined in CFR § 195.2 as ''a pipeline 219.1 mm (8⅝ or less nominal outside diameter that transports petroleum from a production facility.'' Rural gathering lines are considered to be unregulated gathering lines in accordance with 195.1(b)(4).

Part G—Breakout Tanks

List number of tanks by capacity and by commodity. For purposes of this reporting, we seek information in 4 commodity categories: crude, refined products, highly volatile liquids (HVL), or Anhydrous Ammonia/Carbon Dioxide. In the ''Total Capacity, Barrels'' section, enter the total number of tanks in the appropriate box for each of these 4 commodity categories.

Part H—Total Volumes

Include annual volume transported totals in barrel-miles regardless of state. We recognize that it is difficult or impossible to currently measure volume transported by state. We therefore require, for those operators with pipelines in multiple states, that Part H be completed only for the first of the operator's states in alphabetical order. For each subsequent report by state, please reference the state for which Part H is completed (*e.g.,* if operator has pipelines in Alabama and Texas, then on the Texas form in Part H the operator enters ''reported for State of AL'').

Part J—Preparer And Authorized Signature

PREPARER is the name of the person most knowledgeable about the report or the person to be contacted for more information. Please include the preparer's E-mail address if there is one.

Authorized Signature may be the preparer or an officer or other person whom the operator has designated to review and sign reports.

BILLING CODE 4910–60–P

Notice: This report is required by 49 CFR Part 195. Failure to report can result in a civil penalty not to exceed $25,000 for each violation for each day that such violation persists except that the maximum civil penalty shall not exceed $500,000 as provided in 49 USC 60122.

U.S. Department of Transportation
Research and Special Programs Administration

ANNUAL REPORT FOR CALENDAR YEAR 20___
HAZARDOUS LIQUID OR CARBON DIOXIDE SYSTEMS

INITIAL REPORT ☐
SUPPLEMENTAL REPORT ☐

Important: Please read the separate instructions before completing this form.

STATE IN WHICH SYSTEM OPERATES: _____

*(Provide a **separate** report for each state in which system operates. File a **separate** report for Offshore/OCS mileage)*

System Type: 1. Crude Oil ☐ 2. HVL ☐ 3. Refined Petroleum ☐ 4. CO_2/Anhydrous Ammonia ☐

Total Miles in this state: in **intra**state commerce: _____ in **inter**state commerce: _____

PART A - *OPERATOR INFORMATION

1. NAME OF COMPANY OR ESTABLISHMENT

_____

IF SUBSIDIARY, NAME OF PARENT

_____

2. LOCATION OF OFFICE WHERE ADDITIONAL INFORMATION MAY BE OBTAINED

_____ Number & Street

_____ City & County

_____ State & Zip Code

DOT USE ONLY

3. OPERATOR'S 5 DIGIT IDENTIFICATION NUMBER

(If Known) /___/___/___/___/___/

*The operator is the *person (as defined in 49 CFR 195.2)* who exercises substantial control over the operation of the pipeline.

4. HEADQUARTERS NAME & ADDRESS, IF DIFFERENT

_____ Number & Street

_____ City & County

_____ State & Zip Code

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PART B – MILES OF STEEL PIPE BY LOCATION / PROTECTION / DECADE

Decade Pipe Installed			Pre-40 or Unknown	1940 - 1949	1950 - 1959	1960 - 1969	1970 - 1979	1980 - 1989	1990 - 1999	2000 - 2009	Total
Onshore	Cathodic Protected	Bare									
		Coated									
	Un-Protected	Bare									
		Coated									
	Subtotal										
Offshore	Cathodic Protected	Bare									
		Coated									
	Un-Protected	Bare									
		Coated									
	Subtotal										
Total Miles of Pipe											

PART C – MILES OF STEEL PIPE BY NOMINAL SIZE / DECADE

Decade Pipe Installed	Pre-40 or Unknown	1940 - 1949	1950 - 1959	1960 - 1969	1970 - 1979	1980 - 1989	1990 - 1999	2000 - 2009	Total
4 inches or less									
Over 4 up to 6 inches									
Over 6 up to 8 inches									
Over 8 up to 10 inches									
Over 10 up to 12 inches									
Over 12 up to 14 inches									
Over 14 up to 16 inches									
Over 16 up to 18 inches									
Over 18 up to 20 inches									
Over 20 up to 22 inches									
Over 22 up to 24 inches									
Over 24 up to 26 inches									
Over 26 up to 28 inches									
Over 28 up to 30 inches									
Over 30 up to 32 inches									
Over 32 up to 34 inches									
Over 34 up to 36 inches									
Over 36 inches									
Total Miles of Pipe									

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PART D. MILES OF Electric Resistance Weld (ERW) PIPE BY DECADE/WELD TYPE

Decade Pipe Installed	Pre-40 or Unknown	1940 - 1949	1950 - 1959	1960 - 1969	1970 - 1979	1980 - 1989	1990 - 1999	2000 - 2009	Total
High Frequency									
Low Frequency and DC									
Total Miles of Pipe									

PART E. MILES OF PIPE BY SPECIFIED MINIMUM YIELD STRENGTH (SMYS)

	Onshore Miles	Offshore Miles
Less than 20 % SMYS		
Greater or equal to 20% SMYS		

PART F. MILES OF GATHERING LINES

Regulated	Unregulated

PART G. BREAKOUT TANKS

Commodity	Less than or equal to 50,000 Barrels	50,001 to 100,000 Barrels	100,001 to 150,000 Barrels	Over 150,000 Barrels	Total
Total s					

Draft

PART H. TOTALVOLUME TRANSPORTED

Volume in barrel-miles of crude oil: _____

Volume in barrel-miles of petroleum products other than HVLs: _____

Volume in barrel-miles of HVLs or other fluid which is gas at ambient conditions: _____

Volume in barrel-miles of carbon dioxide: _____

Volume in barrel-miles of anhydrous ammonia: _____

PART I. INTERNAL INSPECTION

Percent of system that has been hydrotested in last 10 years:	_____	Percent of System Pigged in last 10 years by a:	
Percent of system that is capable of being pigged in last 10 years:	_____	High Resolution Magnetic Flux tool	_____
Percent of system inspected by Other Tools in last 10 years (specify tool used):	_____	Low Resolution Magnetic Flux tool	_____
		UT tool	_____
		Geometry tool	_____
		Caliper tool	_____
		Crack tool	_____
		Hard Spot tool	_____
		Other tool	_____

PART J - PREPARER AND AUTHORIZED SIGNATURE

(type or print) Preparer's Name and Title _____ Area Code and Telephone Number _____

Preparer's E-mail Address _____ Area Code and **Facsimile** Number _____

Authorized Signature _____ (type or print) Name and Title _____ Date _____ Area Code and Telephone Number _____

Draft Form RSPA F 7000.1-1 (01-2003)

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[FR Doc. 02–18908 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–60–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–10856; Notice 2]

RIN 2127–AI29

Motor Vehicle Safety; Disposition of Recalled Tires

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice seeks comments on a May 9, 2002 comment from the Rubber Manufacturers Association (RMA), in response to our December 18, 2001 Notice of Proposed Rulemaking (NPRM) on Disposition of Recalled Tires (66 FR 65165).

In the NPRM, we proposed to require that tire dealers render returned recalled tires unsuitable for use on the day removed from the vehicle or from stock, and then dispose of them in accordance with manufacturers' plans and applicable laws, in ways that minimize the deposit of the tires in landfills. RMA urged NHTSA to allow tire manufacturers the option of requiring that dealers return all recalled tires directly to the manufacturer, instead of requiring tire dealers and distributors to dispose of the tires themselves. RMA also urged us to consider a number of other suggested revisions to the NPRM. RMA attached suggested regulatory language to its comment.

We seek comments on the merits of RMA's general approach, on whether RMA's proposal is consistent with statutory requirements, and on RMA's proposed regulatory text.

DATES: *Comments:* You should submit your comments early enough to ensure that Docket Management receives them not later than August 26, 2002.

ADDRESSES: You should mention the docket number of this document in your comments, and submit your comments in writing to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/info'' to obtain instructions for filing the document electronically.

Regardless of how you submit your comments, you should mention the docket number of this document in your comments.

You may call Docket Management at 202–366–9324. You may visit Docket Management from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, tel. (202) 366–5226. For legal issues, contact Enid Rubenstein, Office of Chief Counsel, tel. (202) 366–5263.

SUPPLEMENTARY INFORMATION: Section 7 of the Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act expanded 49 U.S.C. 30120(d) to require a manufacturer's remedy program for tires to include a plan for preventing, to the extent reasonably within the manufacturer's control, the resale of replaced tires for use on motor vehicles, as well as a plan for the disposition of replaced tires, particularly through methods such as shredding, crumbling, recycling, recovery, or other ''beneficial non-vehicular uses'' rather than in landfills. Further, Section 7 requires the manufacturer to include information about the implementation of its plan in quarterly reports that it is required to make to the Secretary about the progress of its notification and remedy campaigns involving tires.

In order to implement Section 7's new requirements, we proposed on December 18, 2001 to amend 49 CFR 573.5 and 573.6 to impose requirements on tire manufacturers and on tire dealers. We proposed in the NPRM to require manufacturers that conduct tire recalls to file programs and reports about their plans for incapacitating and disposing of recalled tires that addressed three major concerns: (1) Ways of assuring that entities replacing the tires are aware of the legal prohibitions on the sale of defective or noncompliant tires; (2) mechanisms to impair recalled tires so that they cannot be used on a vehicle; and (3) the disposition of recalled tires, consistent with applicable laws and in ways that minimize their deposit in landfills, and to implement those plans. We also proposed to require ''exceptions reporting,'' by manufacturer-controlled tire outlets to manufacturers monthly, and by manufacturers to NHTSA in quarterly reports, that identify aggregate numbers of recalled tires that have not been rendered unsuitable for reuse or that have been disposed of in violation of applicable state and local requirements; and that describe failures by tire outlets to act in accordance with manufacturers' directions for disposing of recalled tires, including an identification of the outlets in question. We sought comments on the reporting burdens.

Rather than requiring dealers to render tires unsuitable for use and then transfer those tires to authorized disposal facilities, RMA suggested that the rule should permit manufacturers to require dealers to return all recalled tires directly to the manufacturer, at a central facility. *See* RMA's comment, on file in DOT's Docket Management System (DMS) at Docket 10856, Document Number NHTSA–2001–10856–9. Manufacturers would then inspect and sort the tires, destroy those that contain the defect or noncompliance, and, where appropriate, brand those tires that do not contain the defect or noncompliance (to permit their resale). According to RMA, this would simplify the process of recalling and disposing of defective or noncompliant tires, as well as the associated reporting requirements, and, in addition, avoid the unnecessary disposition of tires that are not defective or noncompliant.

RMA argued that the alternative of returning tires to a central location would permit manufacturers both to better control the recall process, as described above, and to test returned recalled tires in order to better understand the failure mechanism. RMA also urged us to eliminate the proposed requirement for dealers to alter recalled tires by the close of business on the day on which the recalled tire has been removed from the vehicle.

In its suggested regulatory text, RMA also proposed to require manufacturers to provide written guidance, either annually or for any recall involving 10,000 or more tires not returned to the tire manufacturer or manufacturer-controlled facility, to manufacturer-owned and manufacturer-controlled tire outlets as well as other tire outlets, about how to alter recalled tires permanently so that they cannot be used on vehicles. *See* RMA Comment, p. 3, ''Suggested Regulatory Language'' at §§ 573.5(c)(9)(A), (B)(1), (B)(2), and (C).

RMA further suggested revising our proposed ''exceptions reporting'' requirement, by changing the timing of required reports from manufacturer-owned or manufacturer-controlled outlets from monthly to within 30 days of removal of a recalled tire from a vehicle, and by requiring those outlets also to report to the manufacturer, within the same time frame, any deviation from the manufacturer-supplied recall plan and any violation of applicable laws and regulations on disposal of scrap tires. *See* RMA Comment at p. 2; RMA Suggested

Regulatory Language at p. 3, proposed §§ 573.5(c)(9)(B)(3), (C)(3).

We seek comments on whether the RMA proposal would effectuate section 7 of the TREAD Act, and whether it would better address the first two major concerns, identified above, than the proposal in the NPRM. We would expect that in most tire recalls, repairs and resale following inspection will not be possible. This was true in the recent Bridgestone/Firestone ATX, ATXII and Wilderness AT recalls, and also in the 1978–79 Firestone 500 recall. Further, we seek comments on mechanisms for assuring the security of recalled tires prior to shipment to the manufacturer, so that those tires do not enter the marketplace inadvertently.

We request comments on whether RMA's proposal fulfills Congress' intentions in the TREAD Act with respect to minimizing the likelihood that recalled tires are disposed of in landfills and, specifically, with respect to encouraging independent tire dealers (as well as manufacturer-owned or manufacturer-controlled outlets) to meet their obligations under state and local law to dispose appropriately of recalled tires.

In addition, we seek comments on the issue of whether RMA's proposed alternative is consistent with 49 U.S.C. 30120(i) and (j), which by their terms preclude the resale of recalled tires that have not been remedied. Section 30120(i) provides that:

[i]f notification (of a defect or noncompliance) is required . . . and the manufacturer has provided to a dealer notification about a new * * * item of replacement equipment in the dealer's possession at the time of notification that contains a defect * * * or does not comply * * *, the dealer may sell or lease the * * * item of replacement only if—(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease[.]

Section 30120(j) provides that:

[n]o person may sell or lease any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under section 30118(b) or a notice require under section 30118(c) in a condition that it may reasonably be used for its original purpose unless—(1) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease[.]

In responding to this question, please provide a discussion that includes the reasons for your conclusion, as well as statutory analysis.

Finally, we seek comments on RMA's proposal to permit manufacturers the option of notifying dealers of their recall responsibilities either annually or for any recall that covers more than 10,000 tires, as opposed to requiring such notifications for all recalls.

We are not reproposing regulatory language because at this time, we have not made a tentative decision to adopt RMA's suggestion. After considering comments on this Supplemental Notice of Proposed Rulemaking, we may adopt an approach that includes one or more features of RMA's proposal, or we may choose to follow an approach that is closer to the one we proposed in the NPRM.

I. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

When we issued the NPRM, we considered the impact of this proposed rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. The NPRM was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking was not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. We expected the impacts of our proposed rule to be so minimal as not to warrant preparation of a full regulatory evaluation, because the proposal essentially would require only the supplementing of reports that manufacturers already must file with limited information about the disposition of recalled tires.

We estimated that the additional economic impact of the proposed rule upon manufacturers would be small. Manufacturers already assume the costs of the tire recalls that they conduct. They already are required by our regulations to notify dealers of recalls and to file plans and quarterly reports about their recalls with our Office of Defects Investigation (ODI). We stated that the additional notification and reporting elements that this rule would add would be very limited and wholly descriptive, and that they would not impose significant costs on manufacturers.

RMA's proposed alternative might limit still further the costs of the proposed rule. If, upon inspection, numerous recalled tires were found not to be defective or non-compliant, the RMA proposal could reduce the costs of disposition of recalled tires. The costs to dealers of incapacitating and recycling the recalled tires would be eliminated under the RMA proposed alternative. There could be increased costs to ensure the security of recalled tires. The extent to which the costs to dealers of shipping recalled tires to the manufacturer at a central location, and ultimately the costs to manufacturers of reimbursing dealers for those shipping costs, would depend on the locations to which recalled tires were shipped.

B. Regulatory Flexibility Act

We have also considered the impacts of RMA's proposed alternative under the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this proposal would not have a significant economic impact on a substantial number of small entities. The primary impact of RMA's proposal would be felt by the major tire manufacturers, which are not small entities. This impact would be relatively minor, since it primarily would involve manufacturers' adding a requirement to ship recalled tires to central location(s) to their remedy programs, notifying affected retail outlets of the remedy plans, and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. We estimated the cost of our original proposal at approximately $1.00 per tire for transportation and $2.00 per tire for recycling. If the effect of RMA's proposal is to eliminate the need to recycle significant numbers of tires, the total recycling costs should be reduced.

We originally estimated the cost to manufacturers of notifying dealers of their plans at $1.00 per tire manufacturer per affected retail outlet, and stated that the cost could well be less because manufacturers might already be including descriptions similar to our proposed requirements in their notices to dealers. Under the first alternative in RMA's proposal, the cost could be even lower, because the content of the manufacturers' notices of recalls would be limited to one or two lines instructing dealers to ship the recalled tires to a designated central location. Under RMA's second proposed alternative, the cost to manufacturers could be somewhat higher, since they would include an annual mailing to all retail outlets of the manufacturers' requirements for the disposition of recalled tires.

We stated in the NPRM that the proposed rule could also have an impact on the nation's 3,500 tire dealers, many of which are small entities. We estimated the reporting costs associated with monthly ''exceptions reporting'' to manufacturers of any instances in which the dealer did not comply with the manufacturer's plan for disposing of

recalled tires at $1.00 per affected dealer per recall. Also, we estimated the potential one-time costs to each dealer for obtaining equipment to incapacitate tires so that the tires could not be resold to the public (although we believed that many dealers already owned such equipment) at between $70.00 (to purchase a power drill and a drill bit) and $95.00 (to purchase a cutoff saw and blade(s)) per affected dealer, or a maximum of between $245,000 and $332,500, assuming that each of the 3,500 dealers purchased a new drill and bit or cutoff saw and blade. We noted that, because not every dealer is involved in a tire recall every year, the aggregate one-time cost would be incurred over a multi-year time period. Under RMA's alternative proposal, all of these costs to dealers could be eliminated.

C. National Environmental Policy Act

We have reviewed this proposal for the purposed of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and determined that it would not have a significant impact on the quality of the human environment. The proposed rule would not require manufacturers to conduct any recalls beyond those that they already are required to conduct. The sale of recalled tires is prohibited by other provisions in the Safety Act. Disposal requirements are already governed by other State laws and regulations.

D. Paperwork Reduction Act

As we indicated in the NPRM, our proposed rule would impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). However, those burdens should be minimal. Manufacturers already are required by our regulations to file plans and quarterly reports about tire recalls with us. There would be an incremental burden of adding to the manufacturers' descriptions of their programs. Even this impact would be minor, since it only would involve adding a description of plans for incapacitating and disposing of recalled noncompliant or defective tires to their remedy programs and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. The limited additional ''exceptions reporting'' that our proposed rule would have required of manufacturers and of manufacturer-controlled outlets that implement recalls, i.e. periodic Aexceptions reporting'' of aggregate numbers of recalled tires that have not been incapacitated for use or that have been disposed of unlawfully, describing any failure to comply with the manufacturer's plan to render tires unsuitable for installation on a motor vehicle for resale and any failure to comply with the disposal requirements of applicable state and local laws and regulations of which the manufacturer becomes aware, would be still more limited under RMA's proposal. We believe that both the proposed rule and RMA's proposal would not impose significant additional costs or burdens either on the manufacturers that conduct the tire recalls or on the manufacturer-controlled outlets that implement them.

Because this proposed rule would impose information collection requirements, albeit minimal, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1329, we stated in the NPRM that we plan to submit the proposed requirements to OMB for its approval, as required by the PRA. We sought comments on the information collection burdens associated with the NPRM. We now seek comments on the information collection burdens associated with the RMA proposal.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on AFederalism'' requires us to develop an accountable process to ensure Ameaningful and timely input'' by State and local officials in the development of Aregulatory policies that have federalism implications.'' The Executive Order defines this phrase to include regulations Athat 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.'' In the NPRM, we stated that our proposed rule, which would require that manufacturers include a plan for disposal of recalled tires in their remedy programs under either section 30118(b) or 30118(c) of the Safety Act, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Both the NPRM and RMA's proposal do not have those implications because both apply directly only to manufacturers who are required to file a remedy plan under sections 30118(b) or 30118(c), rather than to the States or local governments, and because they directs manufacturers to file plans that conform with applicable state and/or local requirements.

F. Civil Justice Reform

Neither the RMA proposal nor our proposed rule would have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because neither our proposed rule nor the RMA proposal would have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we 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 we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this rule.

II. Submission of Comments

A. How Can I Influence NHTSA's Thinking on This Notice?

Your comments will help us decide whether to adopt RMA's alternative proposal, in whole or in part. We invite you to provide different views on this proposal, new approaches we have not considered, new data, information about

how this proposal may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below. Explain your views and reasoning as clearly as possible:

- Provide solid information to support your views.
- If you estimate potential numbers or reports or costs, explain how you arrived at the estimate.
- Tell us which parts of the rule you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the rule, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

B. How Do I Prepare and Submit Comments?

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

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

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

C. 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.

D. 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 (NCC–30), 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.)

E. Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

F. How Can I Read the Comments Submitted by Other People and Other Materials Relevant to this Rulemaking?

You may view the materials in the docket for this rulemaking on the Internet. These materials include background information on the use of tires in landfills and written comments submitted by other interested persons. You may read them 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 and materials on the Internet. To read them 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–2000–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the materials in the docket you selected, click on the desired comments. You may download the comments.

(5) To view the RMA comment, which responds to docket NHTSA–2001–10856, type 10856, click on ''search,'' and click on Document Number NHTSA–2001–10856–9.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: July 22, 2002.

L. Robert Shelton,

Executive Director.

[FR Doc. 02–18996 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AI36

Injurious Wildlife Species; Snakeheads (family Channidae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to amend 50 CFR 16.13 to add snakeheads (family Channidae) to the list of injurious fish, mollusks, and crustaceans. This listing would have the effect of prohibiting the interstate transportation and importation of any live animal or viable egg of snakeheads into the United States. The best available information indicates that this action is necessary to protect the wildlife and wildlife resources from the purposeful or accidental introduction and subsequent establishment of snakehead populations in ecosystems of the United States. As proposed, live snakeheads or viable eggs could be imported only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits would also be required for the interstate transportation of live snakeheads or viable eggs currently held in the United States, for scientific, medical, educational, or zoological purposes.

DATES: Comments must be submitted on or before August 26, 2002.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax

Drive, Suite 322, Arlington, VA 22203, FAX (703) 358–1800. You may send comments by electronic mail (e-mail) to: *Snakeheads@fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358–2464 or *kari_duncan@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to prevent the accidental or intentional introduction of snakeheads (family Channidae) and the possible subsequent establishment of populations of these fish in the wild. The Fish and Wildlife Service is initiating this proposed rule based upon information we have obtained that indicates that snakeheads may be injurious to the wildlife and wildlife resources of the United States.

Description of the Proposed Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of the law, the Secretary of the Interior is authorized to prohibit by regulation certain activities involving wild mammals, wild birds, fish (including mollusks and crustaceans), amphibians, reptiles, and the offspring or eggs of any of the foregoing, that are injurious to human beings, to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The lists of injurious wildlife species are at 50 CFR 16.11–15. If snakeheads are determined to be injurious, their importation into, or transportation between, States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States by any means whatsoever is prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. In addition, no live snakeheads, progeny thereof, or viable eggs acquired under permit could be sold, donated, traded, loaned, or transferred to any other person or institution unless such person or institution has a permit issued by the Director of the U.S. Fish and Wildlife Service. The interstate transportation of any live snakeheads or viable eggs currently held in the United States for any purposes not permitted would be prohibited.

Biology

Two genera are currently recognized in the family Channidae. They are *Channa* (snakeheads of Asia, Malaysia, and Indonesia) and *Parachanna* (African snakeheads). Synonyms include *Bostrychoides, Ophicephalus* and its misspelled form *Ophiocephalus,* and *Parophiocephalus.* Although 86 species and 4 subspecies have been described (Eschmeyer, 1998), current taxonomy is in flux with approximately 28 species recognized as valid (Musikasinthorn, 2001; Table 1). Because their morphology is very similar, it is very difficult to differentiate among species of snakeheads. Juvenile and adult color patterns are often quite different (Day, 1875; Lee and Ng, 1991, 1994), and some are quite variable in size and color, and may represent species complexes. A taxonomic revision of the family, expected to be published within the next two years, will likely result in additional species being recognized as valid and perhaps new species described.

TABLE 1.—CURRENTLY RECOGNIZED SPECIES OF THE FAMILY CHANNIDAE (AFTER MUSIKASINTHORN, 2000, 2001)

Channa amphibeus (McClelland, 1845)—no common name known
Channa argus (Cantor, 1842)—northern snakehead
Channa asiatica (Linnaeus, 1758)—Chinese snakehead
Channa aurantimaculata Musikasinthorn, 2000—no English common name; naga-cheng (Assam, India)
Channa bankanensis (Bleeker, 1852)—Bangka snakehead
Channa baramensis (Steindachner, 1901)—Baram snakehead
Channa barca (Hamilton, 1822)—barca snakehead
Channa bleheri Vierke, 1991—rainbow snakehead
Channa cyanospilos (Bleeker, 1853)—bluespotted snakehead
Channa gachua (Hamilton, 1822)—dwarf snakehead
Channa harcourtbutleri (Annandale, 1918)—Inle snakehead
Channa lucius (Cuvier, 1831)—splendid snakehead
Channa maculata (Lacepède, 1802)—blotched snakehead
Channa marulius (Hamilton, 1822)—bullseye snakehead
Channa maruloides (Bleeker, 1851)—emperor snakehead

TABLE 1.—CURRENTLY RECOGNIZED SPECIES OF THE FAMILY CHANNIDAE (AFTER MUSIKASINTHORN, 2000, 2001)—Continued

Channa melanoptera (Bleeker, 1855)—no common name known
Channa melasoma (Bleeker, 1851)—black snakehead
Channa micropeltes (Cuvier, 1831)—giant snakehead
Channa nox (Zhang, Musikasinthorn, and Watanabe, 2002)—no English common name
Channa orientalis Schneider, 1801—Ceylon snakehead
Channa panaw Musikasinthorn, 1998—no English common name; ng panaw (Myanmar)
Channa pleurophthalmus (Bleeker, 1851)—ocellated snakehead
Channa punctata (Bloch, 1793)—spotted snakehead
Channa stewartii (Playfair, 1867)—golden snakehead
Channa striata (Bloch, 1797)—chevron snakehead
Parachanna africana (Steindachner, 1879)—Niger snakehead
Parachanna insignis (Sauvage, 1884)—Congo snakehead
Parachanna obscura (Günther, 1861)—African snakehead

Snakeheads have distinctive morphological features as follows: Long, almost cylindrical body; long dorsal and anal fins, and all fins supported only by rays; large scales on head, somewhat similar to the large epidermal scales on the heads of snakes (hence the common name, snakeheads); eyes dorsolateral (back and side) and located on the anterior portion of the head; tubular, anterior nostrils; pectoral and caudal fin margins rounded; large mouth with protruding lower jaw; lower jaw always toothed, and prevomer and palatines often toothed; some lower jaw teeth canine-like, and canines present or absent on prevomer and palatines; most species with pelvic fins present; and ventral aorta typically divided into two portions, one serving the gills and the other the suprabranchial (above the gills) chambers. Suprabranchial chambers of *Channa* are non-labyrinthic (complex system of paths/tunnels), and made up of two plates, one formed by the first epibranchial (above the gills), the second from the hyomandibular; those of *Parachanna* consist of a single cavity with elements from the epibranchial of the first gill arch and hyomandibular absent.

Two larger snakehead species, *Channa marulius* and *C. maruloides,* superficially resemble the native bowfin, *Amia calva,* in that all three are elongated fishes, have long dorsal fins, tubular nostrils, and an ocellus

(eyespot) at the base of the upper portion of the caudal fin. The bowfin, however, has its pelvic fins in a more abdominal rather than thoracic or anterior-abdominal position, and the anal fin is not elongated. Moreover, the bowfin does not have a rosette (circular arrangement) of enlarged scales on top of the head.

Species and species complexes of the genus *Channa* are native from southeastern Iran and eastern Afghanistan eastward through Pakistan, India, southern Nepal, Bangladesh, Myanmar (Burma), Thailand, Laos, Malaysia, Sumatra, Indonesia, and China northward into Siberia. Of the currently recognized 25 species of *Channa,* 9 species and representatives of 4 species complexes occur in peninsular Malaysia, Sumatra, and/or Indonesia. Of the same 25 species, 16 species and members of 5 species complexes are tropical to subtropical; members of three species complexes are temperate; and one species is temperate to boreal and can live beneath ice in the northern portion of its range. The three species of *Parachanna* are native to Africa and are tropical.

Snakeheads are considered as non-ostariophysan primary freshwater fishes (Mirza, 1975, 1995), meaning they have little or no tolerance for seawater. Habitat preferences vary by species or species complex, with a majority occurring in streams and rivers. Others occur in swamps, rice paddies, ponds, and ditches. All can tolerate hypoxic (low oxygen) conditions because they are airbreathers from late juvenile stages. Where known, pH range, varies by species with one (*Channa bankanensis*) preferring highly acidic (pH 2.8–3.8) waters. At least three species are tolerant of a wide pH range; *C. gachua, C. punctata,* and *C. striata* survived for 72 hours at pH levels ranging from 4.25 to 9.4 (Varma, 1979).

Spawning seasons vary by species. While information on reproductive biology of many species is lacking, several conclusions can be drawn from those for which this information is available. Breeding in several species occurs primarily in summer months (June through August), and in at least two (the *Channa striata* species complex and *C. punctata*), breeding pairs can be found throughout the year. Some species spawn twice each year. Okada (1960) reported that female northern snakeheads, *C. argus*, are capable of spawning five times per year. There are several reports that when snakeheads pair, the pair remains monogamous for a spawning season, perhaps longer, but a pair may not mate for life.

Snakeheads build nests by clearing a generally circular area in aquatic vegetation, often weaving the removed vegetation around the centrally cleared area. This results in a vertical column of water surrounded by vegetation. One species (*C. punctata*) prepares elaborate tunnels through vegetation leading into the nest column. At time of spawning, the male and female move upward into the central region of the nest column. The male entwines his body around that of the female, with some species appearing to ''dance'' in the water column as eggs are released and fertilized (Breder and Rosen, 1966; Ng and Lim, 1990). Eggs are buoyant, rising to the surface of the nest column, where they are vigorously guarded by one or both parents. Snakeheads in two species complexes (*C. gachua* and *C. orientalis*) are mouthbrooders, with the male being the mouthbrooder of fertilized eggs and, later, fry. Most snakeheads, however, are not mouthbrooders, but one or both parents guard their young vigorously; one species (*C. micropeltes*) reportedly attacked and in some instances killed humans who approached the mass of young (Kottelat, 1993). Thus, parental care, whether by mouthbrooding or guarding, is a behavioral characteristic of snakeheads. Successful spawning in the absence of vegetation has also been reported for three species of snakeheads (Parameswaran and Murgesan (1976b).

Fecundity and Early Development

There is limited information on fecundity (capacity to produce offspring) except for those snakeheads of commercial importance. Nevertheless, that information shows a pattern that likely applies to the entire family Channidae. Smaller species, such as *Channa gachua* and *C. orientalis,* produce few oöcytes or unfertilized ''eggs'' (about 20 when sexual maturity is first reached and later up to 200; Lee and Ng, 1991, 1994). Both are considered to be ''species complexes'' and one or both ''species'' contain mouthbrooding adults; low fecundity is a general rule among mouthbrooding fishes (Breder and Rosen, 1966). Fecundity increases greatly in larger snakehead species and appears to follow increasing body length. For example, Quayyum and Quasim (1962) recorded fecundity ranging from 2,300—26,000 oöcytes for *C. striata*, increasing in number with increasing body length. The bullseye snakehead, *C. marulius*, the largest species of snakehead, has been reported to produce approximately 40,000 oöcytes (Jhingran, 1984). Frank (1970) reported that the northern snakehead, *C. argus*, produced approximately 50,000 oöcytes (Frank, 1970). Frank's data came from Nikol'skiy (1956) who recorded fecundity of 22,000–51,000 in northern snakehead from the Amur basin. Dukravets and Machulin (1978) gave fecundity rates of 28,600 to a high of 115,000 for northern snakehead (probably from Yangtze River stock) introduced to the Syr Dar'ya basin of Turkmenistan/Uzbekistan. They also noted that, although the growth of northern snakehead is slower than that reported for this species from the Amur basin, growth rates from both stocks become equal once sexual maturity is reached.

Oöcytes, when released from the female parent, are small, ranging from approximately 1 mm to slightly over 2 mm in diameter, depending on species. Fertilization takes place by the male releasing milt (sperm) on the oöcytes (or eggs) as they emerge from the female. Eggs contain an oil droplet within the yolk mass, which causes them to rise to the surface. Development time to hatching varies with water temperature and, to a lesser extent, with the species involved. For example, hatching occurred in 54 hours at 16–26°C and 30 hours at 28–33°C in *Channa punctata* (Khan, 1924). In the northern snakehead, *C. argus*, eggs hatch in 28 hours at 31°C, 45 hours at 25°C, and 120 hours at 18°C.

Early Life History

In general, newly hatched fry, depending on species, are about 3.0—3.5 mm in length. Following yolk absorption, snakehead fry begin feeding on zooplankton. Fry typically remain together until they reach early juvenile stage, guarded by one or both adults, or until they can fend for themselves (Lee and Ng, 1994). Late juveniles of the giant snakehead, *Channa micropeltes*, school and feed in packs (Lee and Ng, 1991). Although there are few reports of early life history except for species of commercial importance, it appears that, as larval snakeheads mature to early juvenile stages, the diet changes to small crustaceans and insects, particularly insect larvae. Presence of phytoplankton, plant material, and detritus in the digestive system of young snakeheads, as well as adults, appears to occur from incidental ingestion.

Respiration and Overland Migrations

Snakeheads are highly evolved airbreathing teleostean (bony) fishes, and many are capable of overland migration by wriggling motions (Lee and Ng, 1991; Berra, 2001). They possess suprabranchial (above the gills) chambers for aerial respiration, and the ventral aorta is divided into two

portions to permit bimodal (aquatic and aerial) respiration (Das and Saxena, 1956; Graham, 1997). The suprabranchial chambers become functional during the juvenile stage of growth (Graham, 1997), following which some species of snakeheads are obligate (limited, bound to a restricted environment) and others are facultative (optional, ability to live under varied conditions) airbreathers. In *Channa, the chambers open into the pharynx through inhalent openings.* The chamber lining contains respiratory ''islets'' with vascular papillae. The chambers can be filled with air or water. In addition, in *C. striata*, there are also vascular structures in the mouth and pharynx that can be utilized for respiration; these, however, can be retracted into depressions to prevent damage when feeding (Munshi and Hughes, 1992).

Some channids, perhaps all, have a circadian rhythm in oxygen uptake. *Channa marulius*, for example, showed a peak in oxygen uptake at night. *C. striata* and *C. gachua* peaked in early night hours, and *C. punctata* at dusk (Munshi and Hughes, 1992). Munshi and Hughes (1992) attributed these rhythms to evolution in swamp ecosystems (i.e., the rhythm is a property of the ecosystem).

It is unknown how many species of snakeheads are capable of overland migrations, but several are known to do so. These migrations from drying habitats in search of those with water are probably driven by instinctive behavior. Overland migrations likely apply to those species whose native range is subject to seasonal dry/wet (or monsoonal) conditions (encompassing much of western to southeastern Asia, where a majority of snakehead species exist).

Hypoxic Survival

Snakeheads are either obligate or facultative airbreathers. Therefore, survival in hypoxic waters is not problematic to these fishes. When prevented from access to the surface, adult snakeheads will drown due to lack of oxygen (Day, 1868, Lee and Ng, 1991). Moreover, snakeheads can remain out of water for considerable periods of time as long as they remain moist. Some snakeheads, especially *Channa striata*, can bury themselves in mud during times of drought (Smith, 1965). They are known to secrete mucus that helps to reduce desiccation and facilitates cutaneous breathing (Mittal and Banerji, 1975; Lee and Ng, 1991). Fishers in Thailand are aware of this habit and, during drought periods, will slice into the mud until they locate the fish (Smith, 1965).

For larger species of snakeheads such as *Channa marulius*, young are facultative airbreathers and adults are obligate breathers (Wee, 1982), but all species are airbreathers.

Life Span

No specific information on life span can be found in the literature. Nevertheless, one species (*C. marulius*) is reported to reach a total length of 1.8 meters in Maharashtra State, India (Talwar and Jhingran, 1992), indicating a relatively long life span. Smaller snakeheads, such as members of the *C. gachua* and *C. orientalis* species complexes, may not live for more than a few years. Most larger snakeheads are reported to reach sexual maturity in two years, after which growth slows but fecundity increases with increasing size.

Feeding Habits

There are few studies of feeding habits of snakeheads. For those species studied, following yolk-sac absorption, snakehead fry feed mostly on zooplankton. As juveniles, they feed on insect larvae, small crustaceans, and fry of other fishes (Munshi and Hughes, 1992). What is universal in reports of adult feeding habits is that snakeheads are predators with many species showing a preference for other fishes, although they may also consume crustaceans, frogs, smaller reptiles, and sometimes birds and small mammals. Under conditions of food deprivation, snakeheads can become cannibalistic on their own young. The piscivorous (fish-eating) nature of snakeheads has led to the use of some species (*C. striata* and *C. micropeltes* in particular) to control tilapia populations in aquaculture.

Associated Diseases and Parasites

Investigations of diseases and parasites of snakeheads concentrate on those species of importance in aquaculture. Bykhovskaya-Pavlovskaya *et al.* (1964) cited *Channa argus* as hosting 18 parasite species (Table 2). Two of the same parasites listed by Bykhovskaya-Pavlovskaya *et al.* (1964) were reported from the digestive tracts of northern snakeheads from Kyungpook Province, Korea, from 115 specimens collected between 1995 and 1997. The trematode *Azygia hwangtsinyi* was found in 47% of the samples and the nematode *Pingis sinensis* in 73%.

TABLE 2.—PARASITES OF NORTHERN SNAKEHEAD, CHANNA ARGUS

[Adapted from Bykhovskaya-Pavolovskaya et al. (1964)]

Parasite	Group	Host issues	Other fishes affected
Myxidium ophiocephali	Myxosporidia	gall bladder, liver ducts.	
Zschokkella ophiocephalli	Myxosporidia	kidney tubules.	
Neomyxobolus ophiocephalus	Myxosporidia	gill filaments.	
Mysosoma acuta	Myxosporidia	gill filaments	crucian carp.
Myxobolus cheisini	Myxosporidia	gill filaments.	
Henneguya zschokkei	Myxosporidia	gills, subcutaneous, musculature	salmonids (tubercle disease of salmonids).
Henneguya ophiocephali	Myxosporidia	gill arches, suprabranchial chambers.	
Henneguya vovki	Myxosporidia	body cavity.	
Thelohanellus catlae	Myxosporidia	kidneys.	
Gyrodactylus ophiocephali	Monogenoidea	fins.	
Polyonchobothrium ophiocephalina	Cestoidea	intestine.	
Cysticercus Gryporhynchus cheilancristrotus.	Cestoidea	gallbladder, intestine	cyprinids, perches.
Azygia hwangtsiui	Trematoda	intestines.	
Clinostomum complanatum	Trematoda	body cavity	perches.
Pingis sinensis	Nematoda	intestine.	
Paracanthocephalus curtus	Acanthocephala	intestine	cyprinids, esocids, sleepers, bagrid catfishes.
Paracanthocephalus tenuirostris	Acanthocephala	intestine.	

TABLE 2.—PARASITES OF NORTHERN SNAKEHEAD, *Channa argus*—Continued

[Adapted from Bykhovskaya-Pavolovskaya et al. (1964)

Parasite	Group	Host issues	Other fishes affected
Lamproglena chinensis	Copepoda	gills.	

Literature on parasites of snakeheads includes numerous descriptions of new species, not detailed herein, but indicates that most studies concentrate on cultured fishes such as *Channa argus, C. punctata,* and *C. striata.* The potential threat of these parasites to native North American fishes has yet to be examined.

A disease that received broad attention is epizootic ulcerative syndrome (EUS) that causes high mortality in snakeheads, particularly *Channa striata* and *C. punctata* under intensive culture. EUS involves several pathogens, including motile aeromonad bacteria (eg., *Aeromonas hydrophila, A. caviae, Pseudomonas fluorescens;* Prasad et al., 1998; Qureshi *et al.,* 1999), a fungus *Aphanomyces invadans* (considered a primary pathogen; Mohan et al., 1999; Miles *et al.,* 2001), and perhaps a rhabdovirus (Kanchanakhan et al., 1999; Lio-Po *et al.,* 2000). Another bacterium, *Aquaspirillum* sp., has also been implicated in the disease (Lio-Po *et al.,* 1998). EUS may have originated in India in the 1980s, but has since been found in Pakistan, Thailand, and the Philippines with outbreaks reported from all these areas during the 1990s. Snakeheads are not the only fishes affected by this disease. It is also known to occur in airbreathing catfish (*Clarias*), the bagrid catfish genus *Mystus,* two cyprinid genera (*Cyprinus* and *Puntius*), mastacembalid eels (*Mastacembalus*), and the nandid genus *Nandus* in India (Mukherjee, 1998). In Thailand, it has been found in giant gourami (*Osphronemus gouramy*) and climbing perch (*Anabas testudineus*) during an outbreak in 1996–1997 (Kanchanakhan et al., 1999).

History of introduction in the United States: Four species of snakeheads (*Channa argus, C. marulius, C. micropeltes,* and *C. striata*) have been recorded from open waters of the United States (California, Florida, Hawaii, Maine, Maryland, Massachusetts, and Rhode Island), and two have become established as reproducing populations. At least 13 States prohibit possession of live snakeheads (Alabama, California, Colorado, Florida, Georgia, Idaho, Kentucky, Mississippi, Nevada, Oregon, Texas, Utah, and Washington) and there has been illegal activity, confiscations, citations issued, or investigations initiated in six of those States within the past two years (Alabama, California, Florida, Kentucky, Texas, and Washington).

Florida

An established population of the bullseye snakehead, *Channa marulius,* was discovered in residential lakes and adjoining canals in Tamarac, Broward County, Florida, in 2001 (Florida Fish and Wildlife Conservation Commission, 2001). It is unknown how long this species has occupied these waters, perhaps several years, but both juveniles and adults have been collected, which indicates reproductive success. This species is the largest of snakeheads, with adults commonly reaching lengths of 120–122 cm (Talwar and Jhingran, 1992). It has been reported that in Maharashtra State, India, it can reach a length of 1.8 m and a weight of 30 kg (Talwar and Jhingran, 1992). A length of 30 cm can be reached in one year (Talwar and Jhingran, 1992). The pathway of the introduction to Florida is unknown. The species may have escaped from a fish farm (although there are none known in Tamarac), been purposefully introduced to establish a food or aquarium fish resource, or they may have been introduced by aquarists. Tamarac is located just east of Water Conservation Area II, north of Everglades National Park, and interconnected canal systems lead into this area. Nevertheless, there are water control structures on canals leading into Water Conservation Area II that would have to be open to allow this snakehead access to that area. It is likely that *C. marulius* will expand its range in peninsular Florida as its native range includes tropical to temperate climates. The bullseye snakehead is considered predacious (Jhingran, 1984; Talwar and Jhingran, 1992), especially on other fishes (Schmidt, 2001).

The northern snakehead, *Channa argus,* is also reported from Florida waters. Two individuals were caught in the St. Johns River below Lake Harney, Seminole and Volusia counties, in 2000. Unconfirmed reports indicate three additional individuals having been caught nearby. An attempt to collect additional specimens by U.S. Geological Survey personnel by electroshocking was unsuccessful, but will be repeated in 2002. Until reproduction has been confirmed, the species is considered present but not established. This species is not involved in the aquarium fish trade, but is sold in live food fish markets as a food fish. The most likely pathway is introduction of live food fish, perhaps to establish a local source. The northern snakehead is sold in live food fish markets and some restaurants in Boston and New York, where snakeheads are legal. Live *C. argus* were confiscated in Washington (100 individuals, alive on ice, destined for the international district of Seattle), a market in Houston, Texas (Howells et al., 2002), markets in Miami and Plantation, southeastern Florida, in 2001, and in Orlando, Florida, in March 2002, all indications of the availability of this species in States where possession is illegal. Moreover, a few U.S. aquarium fish retailers sell snakeheads via the Internet. USGS scientists purchased three species from a reputable dealer in Rhode Island, who first requested a copy of the State permit that allowed USGS to possess the fish in Florida. Private purchases can also be made through several Internet ''chat rooms'' where possession of permits is not discussed.

California

California Department of Fish and Game personnel collected a snakehead while electrofishing in a reservoir, Silverwood Lake, in 1997. Silverwood Lake is in the Mohave River drainage, east-northeast of Los Angeles and north of San Bernardino in the San Bernardino Mountains. The specimen was subsequently frozen and later discarded (Camm Swift, pers. comm.). It was identified as *Channa argus* (John Sunada, pers. comm. to W.R. Courtenay, Jr.). It is believed that the fish got in the lake from the California Aqueduct that runs from the San Joaquin River south of Stockton into Lake Silverwood, one of several reservoirs that serves Los Angeles.

Hawaii

The chevron snakehead, (*Channa striata*) has been established on Oahu, Hawaii, since the late 1800s and was introduced from southern China (Herre, 1924). For whatever reasons, it does not appear to have been introduced to other

waters of Hawaii and is confined to reservoirs on Oahu (Maciolek, 1984). In addition, the species is now being cultured as a food fish on Oahu. This species is regarded as carnivorous with a preference for other fishes (Moshin and Ambak, 1983; Conlu, 1986). Lee and Ng (1991) described it as a territorial ambush feeder. It is also used to control tilapia populations in the Philippines (Conlu, 1986).

Maryland

Two adults and eight juveniles of *Channa argus* were found in a pond in Crofton, Anne Arundel County, Maryland in late June and early July 2002. The adults are known to have over-wintered in the pond. The fish were purchased from a live food fish market in New York City, transported to Maryland, and kept in an aquarium, and two fish were released into the pond in 2000. This species appears to be the most common snakehead available in food markets and restaurants as a live food fish.

New England States

A specimen of the northern snakehead, *Channa argus,* was collected in October 2001 from Newton Pond, Sudbury, Worcester County, Massachusetts, by Massachusetts Department of Fish and Wildlife personnel. The likely source is from live food fish markets. It is capable of establishment in most fresh waters of the United States. Okada (1960) reported adults as voracious feeders, particularly on other fishes.

Specimens of the giant snakehead, *Channa micropeltes,* have been collected from open waters in Maine, Massachusetts, and Rhode Island (Courtenay et al, 1984; Fuller *et al.*, 1999). This tropical/subtropical species could not become established in those temperate waters. Juveniles of the species are cardinal red with two dark stripes on either side of the body, and sold by aquarium fish retailers as red or redline snakeheads. Aquarist-oriented web sites note that this species requires much animal food and that growth is rapid. These sites often advise that, once these fish reach approximately 15–20 cm in length, no more than one individual should be kept in a single aquarium because they are aggressive predators. The pathway into these New England States was likely aquarists who released their ''pets'' when they grew too large for their aquaria and/or because it was too costly to feed them. Releases of this species into subtropical waters in southern Florida or Hawaii could lead to establishment of this snakehead, regarded as the most predaceous channid and known to have attacked humans (Ng and Lim, 1990; Lee and Ng, 1991; Kottelat *et al.*, 1993).

Uses

According to U.S. Fish and Wildlife Service Law Enforcement data, 16,554 individuals or 20,527 kilograms of all species of snakeheads were imported into the United States between 1997 and 2000 at a declared value of $85,425 (records of imports report numbers of individual fish OR weight in kilograms). Importations of snakeheads into the contiguous United States do not appear to represent a significant portion of live fish imports at present. However, from the raw data, it is clear that the trend has been upward in recent years.

Snakeheads have been imported into the United States for two purposes: As aquarium fish and for use as food. In Southeast Asia, particularly in Thailand and Malaysia, and to a lesser extent in Japan, there are developing recreational fisheries for the larger snakehead species (see *http://www.fishingasia.com* as an example).

Several species of snakeheads are listed on aquarium fish websites. Some of these entries are for information purposes and a few others list fish for sale. The most popular species are, in order of importance and availability: *Channa micropeltes,* juveniles sold as red or redline snakehead; *C. marulius,* juveniles sold as cobra snakehead; *C. bleheri,* sold as rainbow snakehead; *C. barca* sold as barca or tiger snakehead; *C. gachua* sold under a variety of names; and *Parachanna africana,* juveniles sold as African snakehead. Some are cultured and others are captured from the wild. Rarely does one see listings for *C. asiatica, C. orientalis, C. pleuropthalma, C. punctata,* or *C. stewartii.* This is somewhat surprising because several are attractive aquarium fishes, and they can be purchased from dealers in southeast Asia via the Internet. *Channa bleheri, C. gachua,* and *C. orientalis* are small snakeheads, unlike *C. micropeltes* and *C. marulius* that grow quickly to large sizes. All but the smallest snakeheads are unsuitable for community tanks, and even they may kill other fishes in aquaria. Larger snakeheads require very large aquaria and must be kept alone. The number of aquarium hobbyists interested in keeping snakeheads appears to be small, and snakeheads represent a minor component in the aquarium fish industry (Marshall Myers, pers. comm. to J.D. Williams).

Conversely, use of snakeheads as food fishes is growing in the United States (Table 3). Live snakeheads of the larger species can be purchased in live food fish markets and in some restaurants in States where these fishes are not prohibited, but they are also appearing in markets in States where possession is prohibited (Howells et al., 2002). Some restaurants display live snakeheads in aquaria, a common practice where these fishes are native, allowing customers to choose a fish to be prepared for a meal. This is reminiscent of many U.S. seafood restaurants where one can select a lobster to be cooked from an aquarium.

During FY 1999, the USDA Small Business Innovation Research Program funded a Phase II project to the Hawaii Fish Company of Waialua, Hawaii, to develop commercial culture of the chevron snakehead, *Channa striata.* It is now being cultured in Hawaii as a food fish.

TABLE 3.—SPECIES OF THE FAMILY CHANNIDAE CURRENTLY KNOWN TO BE CULTURED FOR FOOD AND/OR AQUARIUM FISH TRADE

Channa argus **
Channa maculatus
Channa marulius
Channa micropeltes ***
Channa punctata
Channa striata *
Parachanna africana
Parachanna obscura

* Species most widely cultured for food. Also being cultured in Hawaii.

** Second most important species cultured for food.

*** Appears to be the most important species cultured for the aquarium fish trade.

Although several snakehead species may be found for sale alive in live food fish markets, the most available species is the northern snakehead, *Channa argus.* It is being sold in Boston and New York City, where snakeheads are legal. Through confiscation by State fish and game personnel in 2001, it has also been found in the live food fish trade of three States (Florida, Texas, and Washington) where possession of snakeheads is prohibited. The northern snakehead is able to tolerate a considerable temperature range, from warm temperate to boreal climates, where this species can live under ice. Additionally, its airbreathing capabilities enhance its transport and marketing. Marketing and customer preferences, however, are not synonymous. For example, persons of southeastern Asian descent prefer chevron snakehead, *C. striata,* above any other species. It is currently being cultured in much of southeastern Asia, the Philippines, and Hawaii.

Potential Range

Temperature is the most important environmental factor that would determine potential range of snakeheads in the United States. Because there are few data providing thermal tolerance ranges for snakeheads, potential range must be inferred from distribution within native ranges. The family Channidae contains nine species that are strictly tropical, and if introduced, would survive in the warmest waters such as extreme southern Florida, perhaps parts of southern California, Hawaii, and certain thermal spring systems and their outflows in the American west. Another four can be considered tropical to subtropical, indicating a similar potential range of distribution as for tropical species but with a greater likelihood of survival during cold winters and more northward limits. One is subtropical. Another 12 (4 of which appear to be species complexes) snakeheads can tolerate tropical or subtropical to warm temperate conditions, indicative of species that could survive in most southern States. One is warm temperate, and another warm temperate to cold temperate (*Channa argus* with a temperature range of 0–>30° C).

In summary, there are few waters in the United States or territories of the United States that, based on temperature, would preclude some member(s) of the family Channidae from becoming established.

Need for Proposed Rule—Environmental Consequences

Factors That Contribute to Injuriousness

The likelihood of release or escape of snakeheads is high. One species, *Channa striata,* was released and became established in waters of Oahu, Hawaii, before 1900. It was likely introduced as a food fish. A second species, *Channa marulius,* is a recent introduction to southeastern Florida (Broward County) and has also become established. The pathway for this introduction was release of either food or aquarium fish. Two specimens of *Channa argus* were caught in the St. Johns River near Sanford, Florida, and three more were alleged to have been caught at or near the same location. This species is available only through live food fish markets. The same species was captured from a pond in central Massachusetts in October 2001. The snakehead captured in Lake Silverwood, California, was also *C. argus.* Two adults and eight juveniles of *C. argus* were collected from a pond in Crofton, Maryland, in June and July 2002. Individual specimens of *Channa micropeltes* were caught in Maine, Massachusetts, and Rhode Island in past years, the source of which were most likely aquarium fish releases. Those New England States are temperate and could not support establishment of this tropical/subtropical snakehead.

Escape from culture has resulted in establishment of other nonindigenous fishes. If, however, these fish are being shipped to markets in other States, release of live food fish becomes a viable pathway for introduction of this species and they could become established from Florida to or above the U.S.-Canadian border and in many territories of the United States.

If snakeheads escaped, or were released into the wild, the likelihood that they would survive and/or become established with or without reproduction is dependent upon the species of snakehead involved and the location of the release. Waters of southern Florida, Hawaii, the Caribbean territories, and certain thermal springs in the western United States are suitable for survival and establishment of probably all tropical/subtropical to warm temperate snakehead species. That *Channa striata* has been established for over a century in Hawaii and, more recently, *C. marulius* has become established as a reproducing population in southeastern Florida is indicative of the likelihood of survival and potential for establishment of snakehead fishes. Although *C. striata* is largely confined to reservoirs on Oahu, *C. marulius* has ample opportunity to expand its range in southeastern Florida through the large network of interconnected canals and Water Conservation Areas to the west of the metropolitan areas. The native range of this species extends above 30° N.

The availability of *Channa argus* in live food fish markets raises the probability that this species will be released into open water. Moreover, its native range extends from the Yangtze basin in central China northward into the Amur basin and some of its northern tributaries. Its lower thermal limit is 0° C. That two documented specimens were captured by angling from the St. Johns River near Sanford, Florida, and another taken by electrofishing in a pond in central Massachusetts is evidence that this fish is being released.

The likelihood and magnitude of spread would be high for all species within their thermal limits. Both the northern snakehead, *Channa argus,* and, to a somewhat lesser extent, the blotched snakehead, *C. maculata,* expanded their ranges of distribution from sites of initial introduction in Japan. Since introduction of the northern snakehead into the Aral Sea basin in the 1960s, there has been a dramatic range expansion in waters of Kazakhstan, Turkmenistan, and Uzbekistan. Range expansion also occurred in the Philippines following introduction of the chevron snakehead, *C. striata.* As discussed above in the Biology section, there are few waters in the United States or territories of the United States that, based on temperature, would preclude some member(s) of the family Channidae from becoming established.

At all life stages, snakeheads will compete for food with native species. As discussed above in the Biology section, snakehead fry feed on zooplankton; juveniles feed on insect larvae, small crustaceans, and fry of other fishes; and adults are predators, feeding on other fishes, crustaceans, frogs, smaller reptiles (snakes, lizards), and sometimes birds (particularly young waterfowl) and mammals. Through predation, ecosystem balance could be modified drastically should snakeheads become established in waters with low diversity of native fishes and low abundance or absence of native predatory species.

While the potential for snakeheads to transfer pathogens to native wildlife is largely unknown, all snakehead species examined are host to at least several species of parasites. At least two snakehead species, *Channa punctata* and *C. striata,* are susceptible to epizootic ulcerative syndrome (EUS), a disease believed to be caused by several species of bacteria, a fungus, and perhaps a retrovirus, under intensive culture conditions. EUS is not specific to snakeheads and has affected other fishes, such as clariid catfishes, bagrid catfishes, two cyprinid genera, mastacembalid eels, and a nandid fish in India; in Thailand, it has been found in giant gourami and climbing perch. There have been no studies undertaken to examine transfer of parasites or diseases to native North American fishes.

Due to the highly predatory nature of snakeheads, the likelihood and magnitude of effect on threatened and endangered species is high. Of all the taxa listed as endangered or threatened in U.S. aquatic habitats, 16 amphibians, 115 fishes, and 5 of the 21 crustaceans (the surface-dwelling crayfish and shrimp) would be the most likely to be affected. Based on habitat requirements and life history, fishes are more likely to be affected by introduced snakeheads than amphibians and the surface-dwelling crustaceans. Nonetheless, the possibility of an additional nonindigenous predator in the aquatic

community with any listed amphibian or crustacean would constitute a threat.

In the western United States, habitat requirements of listed fishes range from steep-gradient, coldwater mountain streams, lower-gradient large desert rivers, to thermal (warm) springs in desert areas. Eastern fishes likewise occupy a variety of habitats, including springs, creeks, large rivers, and the Great Lakes. One or more species of snakeheads would be capable of living in any of the above habitats. Since all snakehead species prey on fish, to a greater or lesser extent, all of the fishes listed as endangered or threatened would be vulnerable to predation at some stage in their life history. The degree of threat would vary from extremely high for any species of snakeheads introduced in relatively small, isolated habitats, such as desert thermal springs and their outflows in the American southwest, to somewhat less in steep-gradient coldwater mountain streams. Based on the food habits and habitat preferences of snakeheads, it is likely to invade the habitat, feed on, and further threaten Federally listed freshwater fishes. Snakeheads are likely to also further threaten numerous other potential candidates for Federal protection.

The likelihood that one or more species may be placed in danger of extinction or become endangered within the foreseeable future as a result of introduction/establishment is high. The introduction of a small number of individuals (<5) into isolated spring habitats could result in the extinction of endemic spring-adapted fishes or crustaceans. The snakeheads would not have to establish a reproducing population to reduce or eliminate a fish or crustacean species confined to a small section of a stream or isolated spring habitat. A small number of snakeheads introduced, but not established, in a stream or lake would likely have less of an impact. However, any snakehead that becomes established in a water body would represent a significant threat and could potentially put any listed amphibian, fish, or crustacean at risk of extinction.

The likelihood and magnitude of ancillary wildlife resource damage due to control measures is high. Chemical control using rotenone or other similar toxins would likely be damaging to non-target organisms.

Only one species of snakehead, *Channa micropeltes*, a tropical/subtropical species, is reported to have attacked human beings. There have been reports of human deaths as a result. All such incidents apparently happened when humans approached a nest or group of young, and attacks were perpetrated by guarding adults. Therefore, the likelihood and magnitude of direct impacts on human beings is low.

Factors That Reduce or Remove Injuriousness

The ability and effectiveness of measures to prevent escape or establishment of snakeheads are low. As discussed above, the pathways for introduction include intentional and unintentional releases from the live food fish trade and aquarists. All but the smallest snakeheads are unsuitable for community tanks, and even they may kill other fishes in aquaria. Some outgrow their tanks, and the tendency of aquarium hobbyists has been to release fish into open waters rather than killing a pet (Courtenay and Hensley, 1980; Courtenay and Stauffer, 1991; Courtenay and Williams, 1992; Courtenay, 1993; OTA, 1993). The availability of live snakeheads increases the probability of introductions to create localized sources of live fish for live food fish markets and probably encourages some entrepreneurs to consider culturing these species within the continental United States. Additionally, the likelihood of individuals traveling relatively short distances over land or being swept into other water bodies by flooding is high.

The ability to eradicate or control snakehead populations depends on where they are found. If established in large lakes or river systems, eradication and/or control is expected to be nearly impossible, and they would likely become permanent members of the fish community. Control in smaller water bodies depends upon the amount of vegetation, the accessibility to the water body, and the effectiveness of the control methods. When a population is discovered, it is typically too late for removal unless the population is isolated. Additionally, controlling the spread of pathogens once they have been introduced in the wild is practically impossible.

There is no known method of removing all snakeheads following introduction. Piscicides work by preventing fish from removing oxygen from the water. Chemical control using rotenone and similar toxins would likely be ineffective to airbreathing snakeheads and damaging to nontarget organisms except in closed situations. Electrofishing and netting may provide some level of control of snakehead populations; however, eradication using these methods would be too selective on size classes to remove a population of snakeheads.

Since effective measures to eradicate, manage, or control the spread of snakeheads once they are established are not currently available, the ability to rehabilitate or recover ecosystems disturbed by the species is low. Significant risks associated with snakehead release relate to endangerment and extinction of native amphibians, fishes, and crustaceans. Re-establishment of extirpated populations, if biologically possible, would be labor and cost intensive and would depend on eradication of snakeheads within those habitats.

Because snakeheads are likely to escape or be released into the wild; are likely to survive or become established if they escape or are released; are likely to spread since there are no known limiting factors; are likely to compete with native species for food; may transmit parasites to native species; are likely to feed on native species, which will negatively affect native fishes, amphibians, crustaceans, birds, small reptiles, and small mammals; and because it will be difficult to prevent, eradicate, manage, or control the spread of snakeheads; and because it will be difficult to rehabilitate or recover ecosystems disturbed by the species, the Service finds snakeheads to be injurious to the wildlife and wildlife resources of the United States.

Required Determinations

Paperwork Reduction Act

Currently we have approval from OMB to collect information under OMB control number 1018–0092. This approval expires July 31, 2004. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless we display a currently valid OMB control number.

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this rule is not a significant regulatory action.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and economic analysis is not required.

The net economic effect of prohibiting the importation of snakeheads is difficult to determine because of the minimal amount of data available for a relatively new species to the import trade. There is a trade-off between damage avoided by not letting snakeheads get into U.S. water bodies

and the economic benefits received by fish markets and aquarium owners who want to own the species. Since only $85,000 worth of snakeheads were imported during the four-year period between 1997 and 2000, and the potential damage that could be done by snakeheads if they get into U.S. waters would be in the millions of dollars from the loss of native species, including threatened and endangered species, this rule will have a net positive benefit. The dollar amount of imported value is not the net economic value of this fish, but the relatively small amount of imported value compared to environmental damage avoided by prohibiting these species is convincing that this rule will not have a major negative economic effect.

(b) This rule will not create inconsistencies with other agencies. This rule pertains only to regulations promulgated by the Fish and Wildlife Service under the Lacey Act. No other agencies are involved in these regulations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients. This rule does not affect entitlement programs. This rule is aimed at regulating the importation and movement of non-indigenous species that have the potential to cause significant economic and other impacts on natural resources.

(d) This rule does not raise novel legal or policy issues. No previous listings of wildlife as injurious have raised legal or policy concerns.

Regulatory Flexibility Act and SBREFA

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more, and 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.

No individual small industry within the United States will be significantly affected if snakehead importation and interstate transport are prohibited. Live food fish markets, restaurants, and aquarium hobbyists are the entities most likely to be affected by this rule. The number of aquarium hobbyists interested in keeping snakeheads appears to be small, and snakeheads represent a minor component in the aquarium fish industry (Marshall Myers, pers. comm.. to J.D. Williams). With only 16,554 individual snakeheads imported over four years and most of these going to restaurants for human consumption, the number of entities engaging in selling and buying these fish is very small. There is no recreational fishery for these species. The number of entities involved in the trade of these species is not known, but it is assumed to be very small because of the small number of these fish imported. This rulemaking will have the indirect effect of protecting native fishes, amphibians, and crustaceans from the intentional or accidental introduction of snakeheads into U.S. water bodies. The snakeheads would likely devastate many native wildlife populations if introduced into a waterway. It is very unlikely that this rulemaking will affect a substantial number of small entities and those entities affected will not be significantly affected because of the very small numbers of these fish imported. This rulemaking, by protecting the environment from the spread of a nonnative species that would devastate native fishes, amphibians, and crustaceans, will indirectly work to sustain the economic benefits enjoyed by numerous small establishments engaged in the recreational fishing industry, among others.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rulemaking will not affect costs or prices for any fish species other than snakeheads. If the species are found injurious, and importation and interstate movement are banned, the maximum loss would be approximately $22,000 per year to the few entities that deal in these species.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities; will not produce a Federal mandate of $100 million or greater in any year and therefore, is not a ''significant regulatory action''.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule will not impose significant requirements or limitations on private property use.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The proposed rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

NEPA

We have reviewed this rule in accordance with the criteria of the National Environmental Policy Act and our Departmental Manual in 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The action is categorically excluded under the Department's NEPA procedures (516 DM 2, Appendix 1.10), which apply to policies, directives, regulations, and guidelines of an administrative, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.

Tribal Consultation

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal

Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. This rule involves the importation and interstate movement of live snakeheads.

Effects on Energy

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposal is intended to prevent the accidental or intentional introduction of snakeheads and the possible subsequent establishment of populations of these fish in the wild, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

This notice solicits economic, biological, or other information concerning snakeheads of the family Channidae. The information will be used to determine if this family of fishes is a threat, or potential threat, to those interests of the United States delineated above, and thus warrants addition to the list of injurious fish in 50 CFR 16.13.

Public Comments Solicited

Please send comments to Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22030. Comments may be hand delivered or faxed to (703) 358–1800. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: [RIN 1018–AI36]'' and your name and return address in your e-mail message. Please note that this email address will be closed at the termination of this public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us for 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 of organizations or businesses, available for public inspection in their entirety. Due to the highly predatory nature of these fishes and the inability to control them and therefore the need for rapid regulatory action, the public comment period has been limited to 30 days.

Clarity of the 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 this rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any written comments about 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 e-mail comments to *Exsec@ios.doi.gov.*

References Cited

A complete list of all references cited in this rule is available upon request from the Division of Environmental Quality (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we propose to amend part 16, subchapter B, of Chapter I, Title 50 of the Code of Federal Regulations as set forth below.

PART 16—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 18 U.S.C. 42.

2. Amend § 16.13 by revising paragraph (a)(2) to read as follows:

§ 16.13 Importation of live or dead fish, mollusks, and crustaceans, or their eggs.

(a) * * *

(2) The importation, transportation, or acquisition of any live fish or viable eggs of the walking catfish, family Clariidae; live mitten crabs, genus *Eriochei,* or their viable eggs; live mollusks, veligers, or viable eggs of zebra mussels, genus *Dreissena;* and any live fish or viable eggs of the snakehead, Family Channidae, is prohibited except as provided under the terms and conditions set forth in § 16.22.

* * * * *

Dated: July 22, 2002.

Paul Hoffman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–19016 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–55–U

Notices

Federal Register

Vol. 67, No. 144

Friday, July 26, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–997–1 NC]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension to a currently approved information collection in support of the Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Marketing Agreement No. 146. The information collection for this program expires September 30, 2002.

DATES: Comments on this notice must be received by September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–8139, Fax (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement.

OMB Number: 0581–0163.

Expiration Date of Approval: September 30, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: Public Law 101–220, enacted December 12, 1989, amended section 608b of the Agricultural Marketing Agreement of 1937 (Act), as amended (7 U.S.C. 601–674) to require that all handlers who have not signed the Peanut Marketing Agreement No. 146 (7 CFR part 998) be subject to quality, handling, and inspection requirements to the same extent and manner as are required under the Agreement. Regulations (7 CFR part 997) to implement Public Law 101–220 were issued and made effective on December 4, 1990 (55 FR 49983).

The non-signatory handling regulations ensure that peanuts intended for human consumption must meet edible quality requirements. Under the regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principle source of aflatoxin) are required to be diverted to non-edible uses. The regulations also provide that shelled peanuts meeting minimum outgoing quality requirements must be chemically analyzed for aflatoxin contamination. It is estimated that 5 percent of the domestic peanut crop is marketed by non-signatory handlers.

Peanut handlers are business entities that buy raw peanuts from farmers and process them into shelled product (kernels) that is sold to manufacturers who make peanut butter and other peanut products. Under this information collection burden, peanut handlers are respondents and recordkeepers. The forms that are needed to administer the non-signer regulations are as follows:

(1) Handlers Monthly Report of Farmers Stock—Form FV–117, requests information on each handler's shelled peanuts and how those shelled peanuts are prepared for sale to manufacturers. This report is filed monthly.

(2) Monthly Report of Dispositions of Peanuts—Form FV–117–1, requests information on each handler's acquisitions and dispositions of farmers stock peanuts. Farmers stock peanuts are raw, inshell peanuts delivered by farmers to peanut handlers. This report is also filed monthly.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.33 hours (20 minutes) per response.

Respondents: Peanut handlers who have not signed the peanut marketing Agreement.

Estimated Number of Respondents: 33.

Estimated Number of Responses per Respondent: 24.

Estimated Total Annual Burden on Respondents: 264 hrs.

Because the information collection for this program expires on September 30, 2002, AMS is requesting an extension of OMB approval for the applicable forms.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, and mechanical or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0163 and the Peanut Import Regulation, Part 999.600, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

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

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18981 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–999–2 NC]

Notice of Request for an Emergency Approval and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an emergency approval and revision of a currently approved information collection for the Regulation Governing Imports of Peanuts. The information collection for this program expires July 31, 2002. The emergency request was necessary because insufficient time was available to follow normal clearance procedures.

DATES: Comments on this notice must be received by September 24, 2002.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–8139, Fax (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.*

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Regulation Governing Imports of Peanuts, 7 CFR part 999.600.

OMB Number: 0581–0176.

Expiration Date of Approval: July 31, 2002.

Type of Request: Emergency approval and revision of a currently approved information collection.

Abstract: The peanut import regulation appears at 7 CFR part 999.600. This regulation has been authorized by Section 108B(f)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445c3), as amended in 1990 and 1993, and by section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271). Section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) (the 2002 Farm Bill) also provides for regulation of imported peanuts.

The import program ensures that peanuts intended for human consumption in the United States meet edible quality requirements. Peanuts which fail quality requirements must either be reconditioned to meet quality requirements, or be disposed to non-edible outlets. Poor quality peanuts may contain Aspergillus flavus mold (which may cause aflatoxin, a natural carcinogen).

The import regulation was issued June 11, 1996 (61 FR 31306), and the first practical effective date was January 1, 1997, when the import quota for Mexican peanuts was opened for 1997. The import quota for all foreign produced peanuts totals less than 3.5 percent of domestic peanut production of approximately 3.7 billion pounds.

Under the import program, no forms are required to be completed and filed. However, copies of documents on failing lots obtained during the importation and inspection process must be filed. These documents include: Failing grade inspection certificates, failing aflatoxin certificates, re-inspection grade and aflatoxin certificates, shipping bills of lading, and sales receipts to non-edible outlets (animal feed, crushing certificates), and re-export certification.

AMS is responsible for monitoring compliance with these quality and disposition regulations and uses the documents to ensure that importers comply with the regulations.

The information collected is used only by authorized representatives of the Department of Agriculture (USDA), including AMS, Fruit and Vegetable Programs' regional and headquarter's staff.

The estimated total burden is revised from the most recently approved hours of 256. While the total responses per respondents decreased, the total burden hours increased because the number of respondents increased from 15 to 38. The estimated total burden was, therefore, revised and increased.

Estimate of Burden: Total estimated burden for this collection is 433 hours. This includes a record keeping burden of 380 hours (38 respondents × 10 hours). In addition, there is a public reporting burden for this collection of information estimated to average .07 hours or about 4 minutes per response for a total of 53 burden hours.

Respondents: Peanut importers, as well as Customs brokers and other entities filing on behalf of importers.

Estimated Number of Respondents: 38.

Estimated Number of Responses per Respondent: 19.

Estimated Total Annual Burden on Respondents: 433 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0176 and the Peanut Import Regulation, Part 999.600, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

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

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18983 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Cibola National Forest Bluewater Ecosystem Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to initiate vegetation treatments to reach desired conditions within the Bluewater Watershed in the Zuni Mountains on the Mt. Taylor

Ranger District within McKinley and Cibola counties in New Mexico.

DATES: Comments concerning the scope of the analysis must be received by August 23, 2002. The draft environmental impact statement is expected September 2002 and the final environmental impact statement is expected December 2002.

ADDRESSES: Send written comments to Planning Staff, Forest Supervisor's Office, Cibola National Forest, 2113, Osuna Rd., NE, Suite A, Albuquerque, NM 87113–1001, Attn: Planning Staff.

For further information, mail correspondence to: Forest Supervisor, Cibola National Forest Supervisor's Office, 2113 Osuna Rd., NE., Suite A, Albuquerque, NM 87113–1001, phone (505) 346–3900.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor, Cibola National Forest Supervisor's Office, 2113 Osuna Rd., NE., Suite A, Albuquerque, NM 87113–1001, phone (505) 346–3900.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need of the Proposed Action for the Bluewater Ecosystem Management Project, Mt. Taylor Ranger District, Cibola National Forest is to:

- Create conditions where wildfire intensities allow fire to resume its natural ecological role and intensity in the forest mosaic of the Bluewater area within the framework of watershed restoration.
- Create a condition where wildfire intensities in the Bluewater wildland-urban interface are at a level where fire suppression forces can safely remain on site in the face of an advancing fire.

Proposed Action

The USDA Forest Service, Cibola National Forest, Mt. Taylor Ranger District proposes to initiate vegetation treatments to reach desired conditions within the Bluewater Watershed in the Zuni Mountains. The proposed project would be implemented over a period of 5 to 7 years. All endangered, threatened and sensitive species habitat will be surveyed prior to treatment. All cultural resource surveys will be conducted prior to treatment.

No new roads would be constructed under any of the proposed treatments, existing roads will be used. Some overland access to remove material will be allowed under strict contract or permit administration. These access routes will be rehabilitated following use. The following vegetation treatments are proposed:

Piñon/Juniper Wildland Urban Interface

The Piñon/juniper WUI (Wildland Urban Interface) is found along the northern forest boundary just south and west of the Village of Bluewater.

This treatment would restore the grassland and shrub vegetation community and reduce fire hazard in selected piñon-juniper invaded areas along the WUI. Approximately 770 acres of piñon/juniper would be treated through personal use and commercial fuel wood harvest. Groups and corridors of ponderosa pine and piñon/juniper will remain scattered throughout the area. In addition, patches of trees on north and east facing slopes five acres in size and at least 300 feet wide will be retained for thermal and hiding cover for large mammals. Non-useable forest products (*i.e.* small trees and limbs) will be treated by prescribed burning.

Treatments are expected to take 3–7 years to complete.

Maintenance of Piñon/Juniper Control Units

There are three areas of piñon/juniper control units along the wildland urban interface, totaling approximately 2,475 acres, that were originally treated in 1968 or 1971 to enhance rangeland production. Under this prescription the original treatment areas would be maintained by removing most conifer tree vegetation to enhance the grassland/shrub community and reduce fuel continuity. Groups and corridors of conifer species left from the original treatment would be maintained. In addition, hiding and thermal cover may be maintained in 5-acre patches where appropriate to benefit wildlife. Trees will be removed mechanically and non-useable forest products (*i.e.* small trees and limbs) will be treated by burning. The treatment will be implemented in years 3 to 5.

Fuelbreak

The proposed action will treat approximately 12.5 miles (roughly 652 acres) of wildland urban interface along the northern boundary of the project area. These areas are primarily piñon/juniper vegetation types with some ponderosa pine. The objective is to create a 400-foot wide fuelbreak to reduce the continuity of crown fuels and lesten the probability of high intensity crown fire spreading to adjacent homes and other structures. Because natural features will be incorporated when present, fuelbreak treatments will not always be 400 feet wide. Tree density will be reduced by removing primarily smaller diameter trees. The largest diameter trees remain on site after treatment. Non-useable forest products (*i.e.* small trees and limbs) will be treated by prescribed burning. The burning of slash is normally conducted one or two seasons after treatment activities.

Upland Meadow Treatments

These treatments are designed to re-establish upland meadows to their pre-fire suppression condition based on soil type. The treatment areas were either (1) attempted to be reforested during the mid to late 1980's or (2) have been invaded by conifer species as a result of heavy historic grazing and fire suppression. Only large diameter ponderosa pine and trees adjacent to historic tree evidence (large diameter logs and stumps) will be retained.

Approximately 1,900 acres will be treated by mechanical means (hand felling, mechanical sheer). Roughly 380 acres will be treated each year for five successive years. Non-useable forest products (*i.e.* small trees and limbs) will be treated by prescribed burning.

Ponderosa Pine Uneven-Aged Management

This treatment constitutes the predominant vegetation treatment proposed for the Bluewater Ecosystem Management Project. The primary objective of this treatment in the ponderosa pine ecosystem is to create conditions where wildfire intensities allow fire to resume its natural role and intensity in the forest mosaic within the framework of watershed restoration.

Approximately 18,809 acres are proposed for vegetation treatments that will reduce the number of trees within treatment blocks. Treatment blocks will be delineated and prioritized based on stand characteristics, fire risk, access availability, and wildlife objectives.

Approximately (1,960 acres) will be managed for higher tree density to meet northern goshawk habitat standards and guidelines for nesting and post-fledging family areas as specified in the Cibola Forest Plan.

The larger trees will be left standing after treatment. Thinning from below (removing smaller diameter trees) will create a non-uniform, clumpy structure with all ages and all species (pine, juniper, oak, *etc.*) represented across the landscape. Some groups of trees with interlocking crowns will be retained. Tree groups may consist of any age-class. Large woody material (snags, logs, tree limbs) will be retained across the landscape in accordance with the Cibola Forest Plan standards and guidelines. All oak greater than 10 inches would be retained. Stand openings (1 to 4 acres in size) will be re-established or

maintained where they previously existed.

Useable wood products will be made available to the public through personal use permits or commercial sales. Non-useable forest products (*i.e.* small trees and limbs) will be treated by prescribed burning.

Possible Alternatives

Possible alternatives to the proposed action include: (1) Alternate methods of slash treatment and (2) taking no action to allow fire to resume its natural role within the ecosystem and to create conditions along the wildland urban interface, which will allow fire suppression forces to remain and defend property against wildfire. The no action alternative would also exclude the use of various methods of vegetation treatments to reach the desired conditions.

Responsible Official

The responsible official is Liz Agpaoa, Forest Supervisor, Cibola National Forest Supervisor's Office, 2113 Osuna Rd., NE., Suite A., Albuquerque, NM 87113–1001.

Nature of Decision To Be Made

The Forest Supervisor, as the Responsible Official, will:

1. Select the Proposed Action or an alternative.
2. Determine what mitigation measures will be needed to protect resources.

Scoping Process

Public participation will be important at several times during the analysis. The first time is during the scoping period [Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act (CFR) at 40 CFR 1501.7]. The Agency will be seeking written issues with the Proposed Action from Federal, State, and local agencies, any affected Indian tribes, and other individuals who may be interested in or affected by the Proposed Action. The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts to threatened and endangered species habitat if any such species are found to exist in the potential treatment areas. This input will be used to develop additional alternatives. The scoping process includes:

- Identifying potential issues;
- Selecting significant issues with the Proposed Action, needing in-depth analysis;
- Eliminating insignificant issues; issues that have been analyzed and documented in a previous EIS, issues that controvert the need for the Proposed Action, or issues that are outside the authority of the Responsible Official to decide;
- Exploration of additional alternatives based on the issues identified during the scoping process; and

Identification of potential environmental effects of the proposed action and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions). A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement 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 objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement 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 objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 15, 2002.

Liz Agpaoa,

Forest Supervisor.

[FR Doc. 02–18900 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will hold its next meeting.

DATES: The meeting will be held on August 8, 2002, and will begin at 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Other Project Proposals/Possible Action, (5) Sunflower Coordinated Resource Presentation/Possible Action, (6) Valentine Ridge Project Proposal/ Possible Action, (7) General Discussion. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 22, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–18947 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Red River Water Management Project; White County, AR

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the creation of a water management plan to assist the Little Red River Regional Irrigation District in its efforts to reduce the useage of declining groundwater and to enhance fish and wildlife habitat. The project area is located in White County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Room 3416 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone (501) 301–3100.

SUPPLEMENTARY INFORMATION: The project area comprises approximately 81,000 acres of which 35,000 irrigated acres are currently used for grain production such as soybeans and rice. A large majority of the marginal cropland has been converted to non-crop uses such as grass cover and reforestation through the Natural Resources Conservation Service' Conservation Reserve Program. In addition, many acres of on-farm water storage reservoirs and tailwater recovery systems have already been installed under a previous Natural Resources Conservation watershed project. Due to potential public concern regrading the project, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

Alternatives presently under consideration other than the ''no Action'' alternative, include the diversion and delivery of water from the Little Red River near West Point, Arkansas, construction of on-farm water storage reservoirs, underground pipelines, tailwater recovery systems, and improved irrigation management. In addition, the feasibility of providing water to the Arkansas Game and Fish Commission Raft Creek Wildlife Management Area (WMA) will also be explored.

A draft environmental impact statement (DEIS) will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A public scoping meeting will be held to solicit input from the public and to determine the scope of the environmental impact statement on August 15, 2002 from 7 p.m. to 9 p.m. at the Griffithville Senior Citizen's Center located at 208 Main Street (Hwy 385) in Griffithville, Arkansas.

Submit written comments and suggestions on the proposal, or requests to be placed on the EIS mailing list, to Jim Ellis, Biologist, Natural Resources Conservation Service, Natural Resources Planning Staff, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, or e-mail to *Jim.Ellis@ar.usda.gov*.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: July 22, 2002.

David A. Weeks,

Assistant State Conservationist, Natural Resources Planning.

[FR Doc. 02–18909 Filed 7–25–02; 8:45 am]

BILLING CODE 3210–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Arizona NRCS State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Arizona NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Arizona that changes must be made in the NRCS State Technical Guide, specifically in the Conservation Practice Standards. Specifically, Arizona will revise the NRCS National Practice Standards for use in Arizona.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: Steve Barker, Rangeland Management Specialist, Natural Resources Conservation Service, 3003 North Central Avenue, Suite 800, Phoenix, AZ 85012; Phone: 602–280–8823; Fax: 602–280–8805.

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 will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: June 28, 2002.

Michael Somerville,

State Conservationist.

[FR Doc. 02–18910 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED.

Procurement List; Proposed Additions and Deletions

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

ACTION: Proposed Additions to and Deletions from 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, and to delete products previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 25, 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 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.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this 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. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. 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: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1582 (Set of 8, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1583 (Set of 6, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1584 (Set of 4, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1585 (Set of 8, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1586 (Set of 6, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1587 (Set of 4, medium point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1636 (Set of 8, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1637 (Set of 6, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Non-Permanent, 7520–00–NIB–1638 (Set of 4, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1639 (Set of 8, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–00–NIB–1640 (Set of 6, fine point, assorted colors).
Product/NSN: Marker, Lumocolor, Permanent, 7520–01–392–5295 (Set of 4, fine point, assorted colors).
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Paper, Copy, Chlorine-free 50% PCW, 7530–00–NIB–0644 (8½″ x 11″).
Product/NSN: Paper, Copy, Chlorine-free 50% PCW, 7530–00–NIB–0645 (8½″ x 14″).
Product/NSN: Paper, Copy, Chlorine-free 50% PCW, 7530–00–NIB–0646 (8½″ x 11″ 3-hole).
Product/NSN: Paper, Copy, Chlorine-free 50% PCW, 7530–00–NIB–0647 (11″ x 17″).
NPA: Louisiana Association for the Blind, Shreveport, Louisiana.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Administrative Services, MEDCOM Health Care Acquisition Activity. Fort Sam Houston, Texas.
NPA: Goodwill Industries of San Antonio, San Antonio, Texas.
Contract Activity: MEDCOM Health Care Acquisition Activity, Fort Sam Houston, Texas.
Service Type/Location: Administrative Support Services, GSA Greater Chicagoland Service Center. Chicago, Illinois.
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois.
Contract Activity: GSA Greater Chicagoland Service Center, Chicago, Illinois.

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

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

The following product is proposed for deletion from the Procurement List:

Product

Product/NSN: Tape, Postage Meter, 7530–00–912–3924.
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–19002 Filed 7–25–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

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

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 25, 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 Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 1, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 4944) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is 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 organization that will furnish the service to the Government.

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

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Facilities Maintenance Services, U.S. Courthouse and Federal Office Building, Central Islip, New York.

NPA: The Corporate Source, Inc., New York, New York.

Contract Activity: GSA, Public Buildings Service, Brooklyn, New York.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–19003 Filed 7–25–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 020723173–2173–01]

RIN 0607–ZA05

Voting Rights Act Amendments of 1992, Determinations Under Section 203

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The notice's purpose is to publish the Bureau of the Census (Census Bureau) Director's determination as to which political subdivisions are subject to the minority language assistance provisions of Section 203 of the Voting Rights Act.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please contact Ms. Catherine M. McCully, Chief, Census Redistricting Data Office, Bureau of the Census, U.S. Department of Commerce, Federal Building 3, Room 3631, 301–457–4039.

For information regarding the statutory provisions, enforcement, or compliance, contact Mr. Joseph D. Rich, Chief, Voting Section-NWB, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, 1–800–253–3931 or 202–307–2767, or visit the Voting Section Internet site at <*www.usdoj.gov.crt/voting*>.

SUPPLEMENTARY INFORMATION: In August 1992, Congress amended the Voting Rights Act of 1965, Title 42, United States Code, 1973 *et seq.* (See Public Law 102–344.) Among other changes, the minority language assistance provision set forth in Section 203 of the Act was extended to August 6, 2007. Section 203 mandates that a state or political subdivision must provide language assistance to voters if more than 5 percent of the voting age citizens are members of a single-language minority group who do not ''speak or understand English adequately enough to participate in the electoral process'' and if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade. When a state is covered for a particular language minority group, an exception is made for any political subdivision in which less than 5 percent of the voting age citizens are members of the minority group and are limited in English proficiency, unless the political subdivision is covered independently. A political subdivision also is covered if more than 10,000 of the voting age citizens are members of a single-language minority group, do not ''speak or understand English adequately enough to participate in the electoral process,'' and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade.

Finally, if more than 5 percent of the American Indian or Alaska Native voting age citizens residing within an American Indian Reservation (and off-reservation trust lands) are members of a single language minority group, do not ''speak or understand English adequately enough to participate in the electoral process,'' and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade, any political subdivision, such as a county, which contains all or any part of that Indian reservation, is covered by the minority language assistance provision set forth in Section 203. An American Indian Reservation is defined as any area that is an American Indian or Alaska Native area identified for purposes of the decennial census. For Census 2000, these areas were identified by the federally-recognized tribal governments, Bureau of Indian Affairs, and state governments. The Census Bureau worked with American Indian tribes and Alaska Natives to identify statistical areas, such as Oklahoma Tribal Statistical Areas, State-Designated American Indian Statistical Areas, and Alaska Native Village Statistical Areas.

Pursuant to Section 203, the Census Bureau Director has the responsibility to determine which states and political subdivisions are subject to the minority language assistance provisions of

Section 203. The states and political subdivisions obligated to comply with the requirements are listed in the attachment.

Section 203 also provides that ''determinations of the Director of the Census under this subsection shall be effective upon publication in the **Federal Register** and shall not be subject to review in any court.'' Therefore, as of this date, those jurisdictions that are listed as covered by Section 203 have a legal obligation to provide the minority language assistance prescribed by Section 203 of the Act. In the cases where a state is identified as covered, those counties or county equivalents not displayed in the attachment are exempt from the obligation. Those jurisdictions subject to Section 203 of the Act previously, but not included on the list below, are no longer obligated to comply with Section 203. The previous determinations under Section 4(f)(4) of the Voting Rights Act remain in effect and are unaffected by this determination. (*See* Title 28, Code of Federal Regulations, Part 55, Appendix.)

Dated: July 22, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000

State and political subdivision	Group
Alaska:	
Aleutians West Census Area	Aleut.
Bethel Census Area	Eskimo.
Bethel Census Area	American Indian (Tribe not specified).
Bethel Census Area	American Indian (Other Tribe specified).
Denali Borough	Athabascan.
Dillingham Census Area	Eskimo.
Dillingham Census Area	American Indian (Other Tribe specified).
Dillingham Census Area	Native (Other Group specified).
Kenai Peninsula Borough	American Indian (Tribe not specified).
Kenai Peninsula Borough	Aleut.
Kodiak Island Borough	Filipino.
Lake and Peninsula Borough	Athabascan.
Lake and Peninsula Borough	Aleut.
Lake and Peninsula Borough	Eskimo.
Nome Census Area	Eskimo.
North Slope Borough	American Indian (Tribe not specified).
North Slope Borough	Eskimo.
Northwest Arctic Borough	Eskimo.
Northwest Arctic Borough	Alaska Native (Other Group specified).
Southeast Fairbanks Census Area	Athabascan.
Southeast Fairbanks Census Area	Native (Other Group specified).
Valdez-Cordova Census Area	Athabascan.
Wade Hampton Census Area	Eskimo.
Wade Hampton Census Area	American Indian (Chickasaw).
Wade Hampton Census Area	American Indian (Tribe not specified).
Yukon-Koyukuk Census Area	Athabascan.
Yukon-Koyukuk Census Area	Eskimo.
Yukon-Koyukuk Census Area	American Indian (Other Tribe specified).
Arizona:	
Apache County	American Indian (Apache).
Apache County	American Indian (Navajo).
Apache County	American Indian (Pueblo).
Cochise County	Hispanic.
Coconino County	American Indian (Navajo).
Coconino County	American Indian (Pueblo).
Gila County	American Indian (Apache).
Graham County	American Indian (Apache).
Greenlee County	Hispanic.
Maricopa County	Hispanic.
Maricopa County	American Indian (Tohono O'Odham).
Navajo County	American Indian (Apache).
Navajo County	American Indian (Navajo).
Navajo County	American Indian (Pueblo).
Pima County	Hispanic.
Pima County	American Indian (Tohono O'Odham).
Pima County	American Indian (Yaqui).
Pinal County	American Indian (Apache).
Pinal County	American Indian (Tohono O'Odham).
Santa Cruz County	Hispanic.
Yuma County	Hispanic.
Yuma County	American Indian (Yuman).
California:	
State Coverage	Hispanic.
Alameda County	Hispanic.
Alameda County	Chinese.
Colusa County	Hispanic.
Contra Costa County	Hispanic.
Fresno County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Imperial County	Hispanic.
Imperial County	American Indian (Central or South American).
Imperial County	American Indian (Yuman).
Kern County	Hispanic.
Kings County	Hispanic.
Los Angeles County	Hispanic.
Los Angeles County	Chinese.
Los Angeles County	Filipino.
Los Angeles County	Japanese.
Los Angeles County	Korean.
Los Angeles County	Vietnamese.
Madera County	Hispanic.
Merced County	Hispanic.
Monterey County	Hispanic.
Orange County	Hispanic.
Orange County	Chinese.
Orange County	Korean.
Orange County	Vietnamese.
Riverside County	Hispanic.
Riverside County	American Indian (Central or South American).
Sacramento County	Hispanic.
San Benito County	Hispanic.
San Bernardino County	Hispanic.
San Diego County	Hispanic.
San Diego County	Filipino.
San Francisco County	Hispanic.
San Francisco County	Chinese.
San Joaquin County	Hispanic.
San Mateo County	Hispanic.
San Mateo County	Chinese.
Santa Barbara County	Hispanic.
Santa Clara County	Hispanic.
Santa Clara County	Chinese.
Santa Clara County	Filipino.
Santa Clara County	Vietnamese.
Stanislaus County	Hispanic.
Tulare County	Hispanic.
Ventura County	Hispanic.
Colorado:	
Alamosa County	Hispanic.
Conejos County	Hispanic.
Costilla County	Hispanic.
Crowley County	Hispanic.
Denver County	Hispanic.
La Plata County	American Indian (Navajo).
La Plata County	American Indian (Ute).
Montezuma County	American Indian (Navajo).
Montezuma County	American Indian (Ute).
Otero County	Hispanic.
Rio Grande County	Hispanic.
Saguache County	Hispanic.
Connecticut:	
Bridgeport town (Fairfield County)	Hispanic.
Hartford town (Hartford County)	Hispanic.
Meriden town (New Haven County)	Hispanic.
New Britain town (Hartford County)	Hispanic.
New Haven town (New Haven County)	Hispanic.
Waterbury town (New Haven County)	Hispanic.
Windham town (Windham County)	Hispanic.
Florida:	
Broward County	Hispanic.
Broward County	American Indian (Seminole).
Collier County	American Indian (Seminole).
Glades County	American Indian (Seminole).
Hardee County	Hispanic.
Hendry County	Hispanic.
Hillsborough County	Hispanic.
Miami-Dade County	Hispanic.
Orange County	Hispanic.
Osceola County	Hispanic.
Palm Beach County	Hispanic.
Hawaii:	
Honolulu County	Chinese.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Honolulu County	Filipino.
Honolulu County	Japanese.
Maui County	Filipino.
Idaho:	
Bannock County	American Indian (Other Tribe specified).
Bingham County	American Indian (Other Tribe specified).
Caribou County	American Indian (Other Tribe specified).
Owyhee County	American Indian (Other Tribe specified).
Power County	American Indian (Other Tribe specified).
Illinois:	
Cook County	Hispanic.
Cook County	Chinese.
Kane County	Hispanic.
Kansas:	
Finney County	Hispanic.
Ford County	Hispanic.
Grant County	Hispanic.
Haskell County	Hispanic.
Kearny County	Hispanic.
Seward County	Hispanic.
Louisiana: Allen Parish	American Indian (Other Tribe specified).
Maryland: Montgomery County	Hispanic.
Massachusetts:	
Boston city (Suffolk County)	Hispanic.
Chelsea city (Suffolk County)	Hispanic.
Holyoke city (Hampden County)	Hispanic.
Lawrence city (Essex County)	Hispanic.
Southbridge town (Worcester County)	Hispanic.
Springfield city (Hampden County)	Hispanic.
Michigan: Clyde township (Allegan County)	Hispanic.
Mississippi:	
Attala County	American Indian (Choctaw).
Jackson County	American Indian (Choctaw).
Jones County	American Indian (Choctaw).
Kemper County	American Indian (Choctaw).
Leake County	American Indian (Choctaw).
Neshoba County	American Indian (Choctaw).
Newton County	American Indian (Choctaw).
Scott County	American Indian (Choctaw).
Winston County	American Indian (Choctaw).
Montana:	
Big Horn County	American Indian (Cheyenne).
Rosebud County	American Indian (Cheyenne).
Nebraska:	
Colfax County	Hispanic.
Sheridan County	American Indian (Sioux).
Nevada:	
Clark County	Hispanic.
Elko County	American Indian (Other Tribe specified).
Elko County	American Indian (Shoshone).
Humboldt County	American Indian (Other Tribe specified).
Lyon County	American Indian (Paiute).
Nye County	American Indian (Shoshone).
White Pine County	American Indian (Shoshone).
New Jersey:	
Bergen County	Hispanic.
Cumberland County	Hispanic.
Essex County	Hispanic.
Hudson County	Hispanic.
Middlesex County	Hispanic.
Passaic County	Hispanic.
Union County	Hispanic.
New Mexico:	
State Coverage	Hispanic.
Bernalillo County	Hispanic.
Bernalillo County	American Indian (Navajo).
Bernalillo County	American Indian (Pueblo).
Catron County	American Indian (Pueblo).
Chaves County	Hispanic.
Cibola County	American Indian (Navajo).
Cibola County	American Indian (Pueblo).
De Baca County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Dona Ana County	Hispanic.
Eddy County	Hispanic.
Grant County	Hispanic.
Guadalupe County	Hispanic.
Harding County	Hispanic.
Hidalgo County	Hispanic.
Lea County	Hispanic.
Luna County	Hispanic.
McKinley County	American Indian (Navajo).
McKinley County	American Indian (Pueblo).
Mora County	Hispanic.
Rio Arriba County	Hispanic.
Rio Arriba County	American Indian (Navajo).
Roosevelt County	Hispanic.
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
San Miguel County	Hispanic.
Sandoval County	American Indian (Navajo).
Sandoval County	American Indian (Pueblo).
Santa Fe County	Hispanic.
Santa Fe County	American Indian (Pueblo).
Socorro County	Hispanic.
Socorro County	American Indian (Navajo).
Socorro County	American Indian (Pueblo).
Taos County	Hispanic.
Taos County	American Indian (Pueblo).
Torrance County	Hispanic.
Union County	Hispanic.
Valencia County	Hispanic.
Valencia County	American Indian (Pueblo).
New York:	
Bronx County	Hispanic.
Kings County	Hispanic.
Kings County	Chinese.
Nassau County	Hispanic.
New York County	Hispanic.
New York County	Chinese.
Queens County	Hispanic.
Queens County	Chinese.
Queens County	Korean.
Suffolk County	Hispanic.
Westchester County	Hispanic.
North Dakota:	
Richland County	American Indian (Sioux).
Sargent County	American Indian (Sioux).
Oklahoma:	
Harmon County	Hispanic.
Texas County	Hispanic.
Oregon: Malheur County	American Indian (Other Tribe specified).
Pennsylvania: Philadelphia County	Hispanic.
Rhode Island:	
Central Falls city (Providence County)	Hispanic.
Providence city (Providence County)	Hispanic.
South Dakota:	
Bennett County	American Indian (Sioux).
Codington County	American Indian (Sioux).
Day County	American Indian (Sioux).
Dewey County	American Indian (Sioux).
Grant County	American Indian (Sioux).
Gregory County	American Indian (Sioux).
Haakon County	American Indian (Sioux).
Jackson County	American Indian (Sioux).
Lyman County	American Indian (Sioux).
Marshall County	American Indian (Sioux).
Meade County	American Indian (Sioux).
Meade County	American Indian (Cheyenne).
Mellette County	American Indian (Sioux).
Roberts County	American Indian (Sioux).
Shannon County	American Indian (Sioux).
Stanley County	American Indian (Sioux).
Todd County	American Indian (Sioux).
Tripp County	American Indian (Sioux).

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Ziebach County	American Indian (Sioux).
Texas:	
State Coverage	Hispanic.
Andrews County	Hispanic.
Atascosa County	Hispanic.
Bailey County	Hispanic.
Bee County	Hispanic.
Bexar County	Hispanic.
Borden County	Hispanic.
Brewster County	Hispanic.
Brooks County	Hispanic.
Caldwell County	Hispanic.
Calhoun County	Hispanic.
Cameron County	Hispanic.
Castro County	Hispanic.
Cochran County	Hispanic.
Concho County	Hispanic.
Crane County	Hispanic.
Crockett County	Hispanic.
Crosby County	Hispanic.
Culberson County	Hispanic.
Dallas County	Hispanic.
Dawson County	Hispanic.
Deaf Smith County	Hispanic.
DeWitt County	Hispanic.
Dimmit County	Hispanic.
Duval County	Hispanic.
Ector County	Hispanic.
Edwards County	Hispanic.
El Paso County	Hispanic.
El Paso County	American Indian (Pueblo).
Fisher County	Hispanic.
Floyd County	Hispanic.
Frio County	Hispanic.
Gaines County	Hispanic.
Garza County	Hispanic.
Glasscock County	Hispanic.
Goliad County	Hispanic.
Gonzales County	Hispanic.
Guadalupe County	Hispanic.
Hale County	Hispanic.
Hall County	Hispanic.
Hansford County	Hispanic.
Harris County	Hispanic.
Harris County	Vietnamese.
Hidalgo County	Hispanic.
Hockley County	Hispanic.
Howard County	Hispanic.
Hudspeth County	Hispanic.
Irion County	Hispanic.
Jeff Davis County	Hispanic.
Jim Hogg County	Hispanic.
Jim Wells County	Hispanic.
Karnes County	Hispanic.
Kenedy County	Hispanic.
Kinney County	Hispanic.
Kleberg County	Hispanic.
Knox County	Hispanic.
Lamb County	Hispanic.
La Salle County	Hispanic.
Live Oak County	Hispanic.
Loving County	Hispanic.
Lubbock County	Hispanic.
Lynn County	Hispanic.
Madison County	Hispanic.
Martin County	Hispanic.
Matagorda County	Hispanic.
Maverick County	Hispanic.
Maverick County	American Indian (Other Tribe specified).
McMullen County	Hispanic.
Medina County	Hispanic.
Menard County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Midland County	Hispanic.
Mitchell County	Hispanic.
Moore County	Hispanic.
Nolan County	Hispanic.
Nueces County	Hispanic.
Parmer County	Hispanic.
Pecos County	Hispanic.
Presidio County	Hispanic.
Reagan County	Hispanic.
Reeves County	Hispanic.
Refugio County	Hispanic.
Runnels County	Hispanic.
San Patricio County	Hispanic.
Schleicher County	Hispanic.
Scurry County	Hispanic.
Starr County	Hispanic.
Sterling County	Hispanic.
Sutton County	Hispanic.
Swisher County	Hispanic.
Tarrant County	Hispanic.
Terrell County	Hispanic.
Terry County	Hispanic.
Titus County	Hispanic.
Tom Green County	Hispanic.
Travis County	Hispanic.
Upton County	Hispanic.
Uvalde County	Hispanic.
Val Verde County	Hispanic.
Victoria County	Hispanic.
Ward County	Hispanic.
Webb County	Hispanic.
Wharton County	Hispanic.
Willacy County	Hispanic.
Wilson County	Hispanic.
Winkler County	Hispanic.
Yoakum County	Hispanic.
Zapata County	Hispanic.
Zavala County	Hispanic.
Utah:	
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
Washington:	
Adams County	Hispanic.
Franklin County	Hispanic.
King County	Chinese.
Yakima County	Hispanic.

[FR Doc. 02–19033 Filed 7–24–02; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1232]

Grant of Authority; Establishment of a Foreign-Trade Zone; Washington County, MD

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board of County Commissioners of Washington County, Maryland (the Grantee), has made application to the Board (FTZ Docket 36–2001, filed 8/31/01), requesting the establishment of a foreign-trade zone at sites in Washington County, Maryland, adjacent to the Baltimore Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (66 FR 46772, 9/7/01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 255, at the sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 3rd day of July 2002.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 02–19014 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on August 13, 2002, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Industry and Security on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the public,
3. Report on BIS licensing initiatives regarding uncooled thermal imaging.
4. Perspective of European importers on U.S. export regulations and practices.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address:

Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 29, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: July 23, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–19005 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–874]

Certain Ball Bearings and Parts Thereof from the People's Republic of China: Notice of Extension of Preliminary Antidumping Duty Determination

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

ACTION: Notice of Extension of Preliminary Antidumping Duty Determination.

EFFECTIVE DATE : July 26, 2002.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Cindy Lai Robinson at (202) 482–3965 and (202) 482–3797, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

Postponement of Preliminary Determination

The Department of Commerce (the Department) is postponing the deadline for issuance of the preliminary determination in the antidumping duty investigation of certain ball bearings and parts thereof from the People's Republic of China until October 1, 2002.

On March 25, 2002, the Department initiated the above-referenced investigation. *See Notice of Initiation of Antidumping Duty Investigation: Certain Ball Bearings and Parts Thereof from the People's Republic of China*, 67 FR 15787 (April 3, 2002). Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), states that the Department of Commerce (the Department) will issue the preliminary determination of an antidumping duty investigation within 140 days after the date of initiation. Therefore, the notice of initiation stated that the Department would issue its preliminary determination no later than August 12, 2002.

On July 16, 2002, the American Bearing Manufacturers Association (petitioner) made a request pursuant to 19 CFR 351.205(e) for a 50–day postponement of the preliminary determination, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, (the Act). Petitioner's request for postponement was timely, and the Department finds no compelling reason to deny the request. See memorandum from Melissa Skinner to Bernard T. Carreau, (July 22, 2002), which is on file in the Central Records Unit, room B–099 of the main Commerce building. Therefore, in accordance with section 733(c)(1) of the Act, the Department is postponing the deadline for issuing the preliminary determination until October 1, 2002. The Department will issue the final determination in this investigation no later than 75 days after the signature date of the preliminary determination.

This notice of postponement is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: July 22, 2002.

Bernard T. Carreau,

Acting Assistant Secretary Import Administration.

[FR Doc. 02–19010 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Changed Circumstances Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: On May 20, 2002, the Department of Commerce (the Department) published the notice of initiation and preliminary results of its changed circumstances review examining whether ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox S.A. de C.V. by virtue of its corporate name change. *See*

Stainless Steel Sheet and Strip in Coils from Mexico: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 67 FR 35476 (May 20, 2002) (Initiation and Preliminary Results). We have now completed this changed circumstances review in accordance with 19 CFR 351.216 and 351.221(c)(3).

As a result of this review, the Department determines that ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox S.A. de C.V., and that ThyssenKrupp Mexinox S.A. de C.V. should retain the deposit rate assigned to Mexinox S.A. de C.V. by the Department for all entries of the subject merchandise produced or exported by ThyssenKrupp Mexinox S.A. de C.V.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2002).

Background

On May 20, 2002, the Department published the notice of initiation and preliminary results of this changed circumstances review. *See Initiation and Preliminary Results*. We gave interested parties 21 days to comment on this initiation and preliminary results. However, no interested parties provided comments, and no request for a hearing was received by the Department.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[5]

Successorship and Final Results of Review

On the basis of the record developed in this changed circumstances review, we determine that ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox, S.A. de C.V. for purposes of determining antidumping duty liability. In order to make this determination, we examined the management, organizational structure, ownership, production facilities, supplier relationships, and customer base of ThyssenKrupp Mexinox S.A. de C.V. and Mexinox S.A. de C.V. Since record evidence shows that ThyssenKrupp Mexinox S.A. de C.V. has maintained the same management, organizational structure, ownership, production facilities, supplier relationships, and customer base as Mexinox S.A. de C.V., we determine that ThyssenKrupp Mexinox S.A. de C.V. is the successor company to Mexinox S.A. de C.V. For a more thorough discussion of the basis for this decision, *see Initiation and Preliminary Results* (67 FR 35476). Therefore, ThyssenKrupp Mexinox S.A. de C.V. shall retain the antidumping duty deposit rate assigned to Mexinox, S.A. de C.V. by the Department in the most recent administrative review of the subject merchandise.

This notice also serves as a final reminder to parties subject to adminstrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 (a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing and publishing this finding and notice in accordance with sections 751(b) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(c)(3) and 19 CFR 351.216.

Dated: July 19, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–19011 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

Vanderbilt University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–020. *Applicant:* Vanderbilt University, Nashville, TN 37232. *Instrument:* Electron Microscope, Model Tecnai G2 F30 TWIN Helium. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 44424, July 2, 2002. *Order Date:* December 12, 2001.

Docket Number: 02–022 *Applicant:* National Institutes of Health, Bethesda, MD 20892–5766. *Instrument:* Electron Microscope, Model Tecnai TF30T. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at

67 FR 44424, July 2, 2002. *Order Date:* March 20, 2002.

Docket Number: 02–023. *Applicant:* University of California, Los Alamos National Laboratory, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model Tecnai G2 F30 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 44425, July 2, 2002. *Order Date:* December 14, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–19012 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–031. *Applicant:* University of Colorado, JILA, UCB 440, JILA Building, Room S/175, Boulder, CO 80309.

Instrument: Nd:YAG Solid-state Laser. *Manufacturer:* InnoLight GmbH, Germany. *Intended Use:* The instrument is intended to be used for the purpose of Optical Frequency Standard and to investigate the frequency noise, amplitude noise, tunability thermal stability, and optical power of the laser. A high resolution iodine cell based spectrometer will be set up to explore sub-Doppler iodine spectra near 532 nm. The Nd:YAG laser frequency will be doubled and the information of the iodine signal will be used to control the laser frequency. Application accepted by Commissioner of Customs: July 11, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–19013 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071902D]

Marine Mammals; Permit No. 473–1433–02, Permit No. 662–1345–01, and Permit No. 545–1488–00

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

ACTION: Receipt of applications to amend permits.

SUMMARY: Notice is hereby given that Janice Straley, Assistant Professor of Marine Biology, University of Southeast Alaska, 1332 Seward Avenue, Sitka, Alaska 99835–9498; Dena Matkin, P.O. Box 22, Gustavus, Alaska 99826; and The North Gulf Oceanic Society, SPWS Bldg., 3776 Lake Avenue, Suite 204, Homer, AK 99603 (Principal Investigator: Craig O. Matkin) have requested to take the following species of marine mammals for scientific research purposes: Steller sea lions (*Eumetopias jubatus*), humpback whales (*Megaptera novaeangliae*, minke whales (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoinoides dalli*), harbor seals (*Phoca vitulina*), gray whales (*Eschrichtius robustus*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) and Northern fur seals (*Callorhinus ursinus*).

The permit holders are each requesting identical annual takes for the above species to collect dead parts and incidentally harass during killer whale predation studies.

DATES: Written or telefaxed comments on the new applications, amendment requests or Environmental Assessment must be received on or before August 26, 2002.

ADDRESSES: The applications, amendment requests and related documents, and the Environmental Assessment are available for review upon written request, by downloading from the internet, or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, (301) 713–2289, or the Division's web page at *www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_review.html; and*

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits and amendments are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Applications to Amend Permits

Permit No. 473–1433–02, originally issued to Jan Straley December 12, 1997 (62 FR 67052) and amended on October 7, 1999 and February 16, 2001 (66 FR 11274), authorizes the annual take of humpback whales, killer whales, minke whales, gray whales, and fin whales (*B. physalus*) by photo-identification. Additionally, the permit authorizes the take of sperm whales (*Physeter catodon*) by photo-identification and suction cup tagging. The objective of the research is to develop long-term sighting histories of individual whales to assess stock structure, life history parameters, feeding behaviors, social behaviors of feeding populations, and population estimates.

Permit No. 662–1345–01, originally issued to Dena Matkin on May 30, 1997 (62 FR 13368) and amended on June 21, 2002 (67 FR 43283), authorizes the annual take of killer whales and humpback whales by photo-identification. The purpose of the research is to continue long-term, year-

round photo-identification work in Southern Alaska to define the population size, structure and range of killer whales, and to obtain identification of photographs of humpback whales opportunistically in conjunction with the killer whale research.

Permit No. 545–1488–00, originally issued to the North Gulf Society (Principal Investigator: Craig Matkin) on April 30, 1999 (64 FR 24592), authorizes the annual take of killer whales by photo-identification, biopsy sampling and incidental harassment. The purposes of the authorized research is to study killer whale population analyses, describe mating systems and social structures in well-known resident pods and analyze blubber samples for contaminants and genetic studies.

NOAA environmental review procedures provide that scientific research permits are generally categorically excluded from the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) requirements to prepare an environmental assessment (EA) or environmental impact statement (EIS). However, because of the magnitude and intensity of proposed research on Steller sea lions, which is largely related to the recent funding opportunities (see 66 CFR 15842), and the intense public interest in this species, NMFS prepared an EA to consider the scope of Steller sea lion research activities. NMFS has determined that the current applicants' proposed research activities are consistent with those activities previously considered in the EA which resulted in a finding of no significant impact. The EA has been made available on the Permits, Conservation and Education Division website listed previously.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 19, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–19001 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

July 19, 2002.

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

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 26, 2002.

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

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59582, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 19, 2002.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002.

Effective on July 26, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
341/641	233,370 dozen.
347/348	786,998 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

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

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18905 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

July 19, 2002.

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

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

EFFECTIVE DATE: July 30, 2002.

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

SUPPLEMENTARY INFORMATION:

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

The current limit for Category 620 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63036, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 19, 2002.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 30, 2002, you are directed to reduce the current limit for Category 620 in Group I to 9,618,434 square meters [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

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

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18904 Filed 7–25–02; 8:45 a.m.

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

July 19, 2002.

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

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 26, 2002.

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

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63038, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 19, 2002.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 26, 2002, you are directed to reduce the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
338/339	925,479 dozen of which not more than 583,961 dozen shall be in Categories 338–S/339–S [2].
347/348	650,700 dozen of which not more than 373,749 dozen shall be in Categories 347–T/348–T [3].
351/651	271,519 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

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

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–18903 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage of Import Limits and Visa and Certification Requirements for Certain Part-Categories Produced or Manufactured in Malaysia

July 22, 2002.

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

ACTION:

COMMISSIONER OF CUSTOMS AMENDING COVERAGE FOR IMPORT LIMITS AND VISA AND CERTIFICATION REQUIREMENTS.

EFFECTIVE DATE: August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Daly, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

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

The Harmonized Tariff Schedule of the United States (HTS) has been amended, and certain HTS classification numbers are being changed for products in part-Categories 438–W and 438–O. The Uruguay Round Agreement on Textiles and Clothing and the U.S.-Malaysia export visa arrangement both utilize the HTS and include such goods within their scope. To facilitate implementation of these agreements, CITA is directing the Commissioner of Customs to amend monitoring and import control directives and visa and certification requirement directives for Malaysia to account for this change, amending part-Categories 438–W and 438–O.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend monitoring, import control, and visa and certification requirements with respect to part-Categories 438–W and 438–O.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 22, 2002.

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

Dear Commissioner: This directive amends, but does not cancel, the monitoring and import control directives, and all visa and certification requirement directives for Malaysia, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include wool textile products in part-Categories 438–W and 438–O produced or manufactured in Malaysia and imported into the United States on and after, regardless of the date of export.

Effective on August 1, 2002, you are directed to make the changes shown below in the aforementioned directives for products entered in the United States for consumption or withdrawn from warehouse for consumption on and after August 1, 2002 for part-Categories 438–W and 438–O, regardless of the date of export:

Category	HTS change
438–W	Delete 6110.10.2080
.....	Replace with 6110.11.0080, 6110.12.2080, 6110.19.0080
438–O	Delete 6110.10.2070
.....	Replace with 6110.11.0070, 6110.12.2070, 6110.19.0070

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–18906 Filed 7–25–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 2, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19046 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 9, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19047 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 16, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19048 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 23, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19049 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 30, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–19050 Filed 7–24–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received September 24, 2002.

ADDRESSES: Written comments and recommendations on the information collection should be sent to TRICARE Management Activity, Office of General Counsel, 16401 E. Centretech Parkway, Attn: James Douglas, Aurora, CO 80011.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call TRICARE Management Activity, Office of General Counsel at (303) 676–3705.

Title Associated with Form, and OMB Number: Statement of Personal Injury—Possible Third Party Liability Champus, DD Form 2527, OMB Number 0720–0003.

Needs and Uses: This information collection is completed by CHAMPUS beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in the evaluation and processing of these claims.

Affected Public: Individuals or household, Federal government.

Annual Burden Hours: 87,500.

Number of Respondents: 350,000.

Responses per Respondent: 1.

Average Burden per Response: 35 minutes.

Frequency: On occasion, only when a beneficiary is insured under circumstances creating possible liability in a third party.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Federal Medical Care Recovery Act, 42 U.S.C. 25/651–2653 as implemented by Executive Order No. 11060 and 28 CFR part 43 provides for recovery of the reasonable value of medical care provided by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in some third person. DD Form 2527 is required for investigating and asserting claims in favor of the United States arising out of such incidents.

When a claim for CHAMPUS benefits is identified as involving possible third party liability and the information is not submitted with the claim, the TRICARE/CHAMPUS contractor requests that the injured party (or a designee) complete DD Form 2527. To protect the interests of the Government, the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated appropriate legal officer of the Uniformed Services. The responsible Uniformed Services legal officer uses the information as a basis for asserting and settling the Government's claim. When appropriate, the information is forwarded to the Department of Justice as the basis for litigation.

Section 1 of the Form is used to collect general information, such as name, address and telephone numbers about the military sponsor and the injured beneficiary.

Section 2 of the Form allows the injured beneficiary to explain in his or her own words how the injury occurred. This allows the beneficiary to explain that he or she was not injured in an accident or that no third party was responsible. If either of these conditions exist, the beneficiary does not have to complete the rest of the form.

Section 3 of the Form is used to collect information about accidents that do not involve motor vehicles. Information such as location, time, date, property owner's name and address and the names of persons involved or witnesses is collected in this section of the form. Other information relating to police investigations, other injured family members, whether the accident was work related and insurance coverage is also collected.

Section 4 of the Form is used to collect information about motor vehicle accidents. Most of the investigations for possible third party liability involve motor vehicle accidents. A beneficiary must attach a copy of the official police report to the form. Additional information not usually included in police reports is entered in Section 4, including information about insurance coverage of the parties, and whether the accident was work related is collected.

Section 5 of the Form is used for miscellaneous information such as possible medical treatment in a Government hospital, the name and address of the beneficiary's attorney, and information regarding any possible releases or settlements with another party to the accident.

Section 6 of the Form contains the certification, date and signature of the beneficiary (or a designee).

Dated: July 22, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–18901 Filed 7–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0083]

Federal Acquisition Regulation; Submission for OMB Review; Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning qualification requirements. A request for public comments was published in the **Federal Register** at 67 FR 20745, on April 26, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology;

ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0083, Qualification Requirements in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

Respondents: 2,207.
Responses Per Respondent: 100.
Annual Responses: 220,700.
Hours Per Response: .25.
Total Burden Hours: 55,175.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: July 22, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–19007 Filed 7–25–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2002 study on the Threat of Asymmetric Attack. The purpose of the meeting is to allow the SAB and study leadership to brief the Secretary of the Air Force on the results of their study. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: August 13, 2002.

ADDRESSES: Room 4E869, Pentagon, Washington, DC 20330.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–18925 Filed 7–25–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 26, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 22, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.
Title: Federal Family Education Loan (FFEL) Deferment Requests.
Frequency: Annually.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 1,148,819.
Burden Hours: 183,811.
Abstract: These forms will serve as the means of collecting information necessary to determine whether a FFEL borrower qualifies for a specific type of loan deferment.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1985. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address

vivan.reese@ed.gov. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to 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. 02–18930 Filed 7–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–271]

Application To Export Electric Energy; Wolverine Power Supply Cooperative, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Wolverine Power Supply Cooperative, Inc. (Wolverine) has applied to export electric energy from the United States to Canada for a period of five years, pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 26, 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) 202–586–4708 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 June 28, 2002, Wolverine applied to the Department of Energy (DOE) for authority to export electric energy from the United States to Canada. Wolverine is a Michigan generation and transmission electric cooperative providing wholesale service to its five member cooperatives: Cherryland Electric Cooperative, Great Lakes Energy Cooperative, Presque Isle Electric & Gas Co-op, Homeworks Tri-County Electric Cooperative and Wolverine Power Marketing Cooperative, Inc. These five member cooperatives resell Wolverine power at retail to end-use customers located within northern and western portions of Michigan's lower peninsula. Electric energy delivered by Wolverine to Canada will originate either inside or outside of Wolverine's system depending upon existing market conditions at the time of each sale. Any electric power Wolverine would export to Canada would be in excess of any native load commitments and firm power contracts it has with its member system cooperatives.

In FE Docket No. EA–271, Wolverine proposes to export electric energy to Canada and to arrange for the delivery of those exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by Wolverine 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 Wolverine application to export electric energy to Canada should be clearly marked with Docket EA–271. Additional copies are to be filed directly with Stephen J. Videto, General Counsel, Wolverine Power Supply Cooperative, Inc., P.O. Box 229, 10125 W. Watergate Road, Cadillac, MI 49601.

A final decision will be made on this application after the environmental impact has been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Regulatory'' Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on July 22, 2002.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–18963 Filed 7–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, August 2, 2002, 3:30 p.m.–8:30 p.m.; Saturday, August 3, 2002, 8 a.m.–3 p.m.

ADDRESSES: Rothchild Catering, 8807 Kingston Pike, Knoxville, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

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, waste management, and related activities.

Tentative Agenda

August 2, 2002

- Presentations and discussions with the Department of Energy, the Tennessee Department of Environment and Conservation, and

the Environmental Protection Agency Region 4 to discuss the topics that each agency would like the Board to consider in developing its Fiscal Year (FY) 2003 Annual Work Plan

August 3, 2002

- Evaluate the Board's effectiveness and approach the impact of its achievements over the past year
- Develop the FY 2003 Annual Work Plan by identifying issues and activities from input received from the three agencies, the public, and the FY 2003 standing committee and recommendation evaluations

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 Halsey at the address or telephone number listed above. 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 at the end of the meeting. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on July 22, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–18961 Filed 7–25–02; 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. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 15, 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 July Minutes; Review Agenda
6:10 p.m.—DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m.—Review of Action Items
7:05 p.m.—Break
7:15 p.m.—Presentation
- Seismic Study Report

7:45 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:30 p.m.—Administrative Issues
- Preparation/Discussion—October Chair's Meeting
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments

8:50 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 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 a.m. and 5 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 July 23, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–18964 Filed 7–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 02–38–NG, 02–41–NG, 02–20–NG, 02–42–NG, 02–40–NG, 02–43–NG, 02–45–NG, 02–39–NG, and 02–46–NG]

Chevron U.S.A. Inc., United States Gypsum Company, Chehalis Power Generating, Limited Partnership, Boise Cascade Corporation, St. Lawrence Gas Company, Inc., Premstar Energy Canada Ltd., Calpine Energy Services, L.P., Anadarko Energy Services Company, Power City Partners, L.P.; Orders Granting Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2002, it issued Orders granting authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at *http://www.fe.doe.gov* (select gas

regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July, 2002.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1785	6–4–02	Chevron U.S.A. Inc., 02–38–NG.	18 Bcf	.....	Import natural gas from Canada, beginning on July 1, 2002, and extending through June 30, 2004.
1786	6–5–02	United States Gypsum Company 02–41–NG.	7.3 Bcf	.....	Import natural gas from Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1787	6–10–02	Chehalis Power Generating, Limited Partnership, 02–20–NG.	65.7 Bcf	.....	Import natural gas from Canada, beginning on January 1, 2003, and extending through December 31, 2004.
1788	6–14–02	Boise Cascade Corporation, 02–42–NG.	10 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2002, and extending through October 31, 2004.
1789	6–17–02	St. Lawrence Gas Company, 02–40–NG.	25.8 Bcf	.....	Import natural gas from Canada, Inc. beginning on July 26, 2002, and extending through July 25, 2004.
1790	6–17–02	Premstar Energy Canada Ltd. 02–43–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2003, and extending through June 30, 2004.
1791	6–20–02	Calpine Energy Services, L.P. 02–45–NG.	300 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2002, and extending through June 30, 2004.
1792	6–25–02	Anadarko Energy Services Company, 02–39–NG.	100 Bcf/50 Bcf		Import and export a combined total of natural gas from and to Canada, and import LNG from various sources beginning on May 1, 2002, and extending through April 30, 2004.
1793	6–25–02	Power City Partners, L.P. 02–46–NG.	146 Bcf	.....	Import natural gas from Canada, beginning on July 1, 2002, and extending through June 30, 2004.

[FR Doc. 02–18962 Filed 7–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–168–000, et al.]

UEG Araucaria Ltda., et al.; Electric Rate and Corporate Regulation Filings

July 19, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. UEG Araucaria Ltda.

[Docket No. EG02–168–000]

Take notice that on July 16, 2002, UEG Araucaria Ltda. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Brazilian limited liability company, owns power generating facilities in Brazil. These facilities consist of an 480 MW electric generating facility and facilities necessary to make wholesale sales of electricity in Brazil.

Comment Date: August 6, 2002.

2. DTE Energy Company

[EC01–146–006]

Take notice that on July 16, 2002, International Transmission Company and DTE Energy Company tendered a filing in compliance with an order of the Federal Energy Regulatory Commission (Commission) issued on May 22, 2002.

Comment Date: August 6, 2002.

3. Pacific Gas and Electric Company

[Docket Nos. ER02–358–002, ER01–2998–002, and EL02–64–002]

Take notice that on July 15, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing the Settlement Agreement pursuant to Rule 602 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.602. This Settlement Agreement will replace the Interconnection Agreement between PG&E and Northern California Power Agency and the Interconnection Agreement between PG&E and the City of Santa Clara, Silicon Valley Power on file with the Commission respectively as PG&E First Revised Rate Schedules FERC Nos. 142 and 85.

Copies of this filing have been served upon all members of the Official Service Lists of the above-mentioned dockets, the California Public Utilities Commission and the California Independent System Operator

Comment Date: August 5, 2002.

4. Niagara Mohawk Power Corporation

[Docket No. ER02–1266–002]

Take notice that on July 16, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) submitted its Compliance Filing in this proceeding in conformance with the Federal Energy Regulatory Commission's July 1, 2002 Order in Docket No. ER02–1266–001.

Comment Date: August 6, 2002.

5. Ameren Services Company

[Docket No. ER02–2236–000]

On July 9, 2002, the Commission issued a ''Notice of Filing'' in docket number ER02–2237–000 pertaining to an unexecuted Service Agreement for Long-Term Firm Point-To-Point Transmission Services between ASC and American Electric Power Services Corp. The Notice has been re-docketed to ER02–2236–000.

6. Ameren Services Company

[Docket No. ER02–2237–000]

On July 9, 2002, the Commission issued a ''Notice of Filing'' in docket number ER02–2236–000 pertaining to an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and Southwestern Electric Cooperative, Inc. The Notice as been re-docketed to ER02–2237–000.

7. Niagara Mohawk Power Corporation

[Docket No. ER02–2322–000]

Take notice that on July 16, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) filed its Second Revised Schedule A amending its Rate Schedule FERC No. 204 to provide for the termination of transmission service under that agreement to the Power Authority of the State of New York (NYPA) for delivery to the Oneida-Madison Electric Cooperative, Inc. (Oneida-Madison) effective November 18, 1999, the date on which service to NYPA for delivery to Oneida-Madison converted to Niagara Mohawk's Rate Schedule FERC No. 312.

Comment Date: August 6, 2002.

8. Public Service Company of New Mexico

[Docket No. ER02–2323–000]

Take notice that on July 16, 2002, Public Service Company of New Mexico (PNM) submitted for filing a unilaterally executed copy of a service agreement with the California Independent System Operator dated July 12, 2002, for electric energy and/or capacity sales at negotiated market-based rates under PNM's Power and Energy Sales Tariff (FERC Electric Tariff, First Revised volume No. 3). PNM has requested an effective date of June 18, 2002 for the service agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of this filing have been served upon the California Independent System Operator, the New Mexico Public Regulation Commission, and the New Mexico Attorney General.

Comment Date: August 6, 2002.

9. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–2325–000]

Take notice that on July 16, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with Southern Illinois Power Cooperative.

Ameren Energy seeks Commission acceptance of these service agreements effective July 3, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: August 6, 2002.

10. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–2326–000]

Take notice that on July 16, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with Westar Energy, Inc. Ameren Energy seeks Federal Energy Regulatory Commission acceptance of these service agreements effective June 26, 2002.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and counterparty.

Comment Date: August 6, 2002.

11. Xcel Energy Services, Inc. Northern States Power Company

[Docket No. ER02–2327–000]

Take notice that on July 16, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company (NSP) submitted for filing with the Federal Energy Regulatory Commission (Commission) the First Revision of: The Letter Agreement extending the Distribution Facilities Agreement; and the Letter Agreement extending the Interim Wholesale Rate between Northern States Power and the City of Shakopee, Minnesota.

NSP requests the letter agreements be accepted for filing effective January 1, 2002, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment Date: August 6, 2002.

12. Arizona Public Service Company

[Docket No. ER02–2328–000]

Take notice that on July 16, 2002, Arizona Public Service Company (APS) tendered for filing two Service Agreements to provide point-to-point transmission service to Public Service Company of New Mexico, Wholesale Power Marketing under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on Public Service Company of New Mexico, Wholesale Power Marketing, New Mexico Public Regulation Commission, and the Arizona Corporation Commission.

Comment Date: August 6, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18902 Filed 7–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 4204–024 Project Nos. 4660–028, Project Nos. 4659–026, Arkansas]

City of Batesville, AR, Independence County, AR; Notice of Availability of Multi-Project Environmental Assessment

July 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for license amendments for the White River Lock and Dam No. 1 Project (P–4204–024), White River Lock and Dam No. 2 Project (P–4660–028), and White River Lock and Dam No. 3 Project (P–6059–006), located on the White River in Independence County, Arkansas, and has prepared a multi-project Environmental Assessment (EA) for the projects. There are no Federal lands or Indian reservations occupied by projects' works or located within the projects' boundaries.

The EA contains the staff's analysis of the potential environmental impacts of the amendments and concludes that issuing the amendments, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 4204–024, 4660–028 and 4659–026 to all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

For further information, contact Janet Hutzel at (202) 208–2271.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18986 Filed 7–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516, South Carolina]

South Carolina Electric & Gas Company; Notice of Availability of Final Environmental Assessment

July 22, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has prepared a Final Environmental Assessment (FEA) for the Saluda Dam Seismic Remediation Project. The Saluda Dam is a part of the Saluda Project (FERC No. 516) and is located on the Saluda River in Lexington, Richland, Newberry, and Saluda counties, South Carolina.

The FEA contains the staff's analysis of the potential environmental impacts of the dam remediation project and contains measures to minimize those impacts. The FEA concludes that the project, with recommended mitigation measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the Web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance), or at http://www.ferc.gov/hydro/docs/saludafea.pdf.

For further information, contact John Mudre at (202) 219–1208 or john.mudre@ferc.gov.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18985 Filed 7–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–40–008]

Florida Gas Transmission Company; Notice of Meeting

July 22, 2002.

On August 6, 2002, Commission staff will attend a meeting sponsored by Representative Michael Bilirakis of Florida to address issues regarding Florida Gas Transmission Company's planned Compressor Station 27 near Thonotosassa, Florida.

The meeting will take place at 5:30 p.m. at the Sterling Heights Recreation Center, 11706 Thonotosassa Road, Thonotosassa, FL 33592. Anyone interested in attending the meeting may contact the Commission's Office of External Affairs, toll free at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18984 Filed 7–25–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7246–6]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described in the beginning of **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before October 24, 2002.

ADDRESSES: 1200 Pennsylvania Avenue, NW, Attn: 3802R, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the Supplementary Information.

FOR FURTHER INFORMATION OR A COPY CONTACT: For specific information on the individual ICRs see Section B of the Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) Monthly Progress Reports, EPA ICR No. 1039.09, OMB Control No. 2030–0005, expires 2/28/03.

(2) Oral and Written Purchase Orders, 1900–8 and 1900–13, EPA ICR No. 1037.06, OMB Control No. 2030–0007, expires 2/28/03.

(3) Contractor Cumulative Claim and Reconciliation, 1900–10, EPA ICR No. 0246.07, OMB Control No. 2030–0016, expires 2/28/03.

B. Contact Individuals for ICRs

(1) Monthly Progress Reports, Frances Smith, phone (202) 564–4368, fax (202) 565–2475, e-mail *smith.frances@epa.gov,* (OMB Control No. 2030–0005; EPA ICR No. 1039.09) expiring 2/28/03.

(2) Oral and Written Purchase Orders, 1900–8 and 1900–13, Frances Smith, phone (202) 564–4368, fax (202) 565–2475, e-mail *smith.frances@epa.gov,* (OMB Control No. 2030–0007; EPA ICR No. 1037.06) expiring 2/28/03.

(3) Contractor Cumulative Claim and Reconciliation, 1900–10, Frances Smith, phone (202) 564–4368, fax (202) 565–2475, e-mail *smith.frances@epa.gov,* (OMB Control No. 2030–0016; EPA ICR No. 0246.07) expiring 2/28/03.

C. Individual ICRs

(1) Monthly Progress Reports, EPA ICR No. 1039.09, OMB Control No. 2030–0005, expires 2/28/03.

Affected Entities: Entities potentially affected by this action are those holding cost reimbursable contracts with EPA.

Abstract: Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor the contractor's progress under the contract. Responses to the information collection are mandatory for contractors performing under a cost reimbursement contract, and are required to receive monthly reimbursement. Information submitted is protected from public release in accordance with the Agency's confidentiality regulations, 40 CFR 2.201 *et seq.*

Burden Statement: EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection because there has been no change in the information being collected and approximately the same number of contracts remain active. As such, it is estimated that each response will take approximately 36.25 hours. EPA anticipates that the total active cost reimbursement contracts will remain approximately 407, times 12 submissions per year to yield about 4,884 annual collections. Each collection is estimated to cost $2,592 based on a variety of contractor personnel performing individual tasks required for information gathering and submission. The anticipated 4,884 annual submissions are estimated to cost $12,656,886 annually. Minimal operation and maintenance costs are expected for photocopying and postage.

(2) Oral and Written Purchase Orders, 1900–8 and 1900–13, EPA ICR NO.1037.06, OMB Control No. 2030–0007, expires 2/28/03.

Affected Entities: Entities potentially affected by this action are those which seek to provide supplies and services to the EPA under simplified acquisition procedures.

Abstract: When EPA has a requirement for supplies or services and the value of same is under the simplified acquisition threshold, the Agency solicits verbal or written quotes from potential vendors. Vendor responses are voluntary and generally consist of item name, unit cost, delivery terms, company name, small business status, address, phone number, and point of contact. The Agency uses the collected information to make award decisions and obtain needed supplies and services. An agency many not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulation are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Burden Statement: Based on historical information collections, the estimated time required to complete each response to an oral or written purchase order is 15 minutes. Vendors must listen to questions asked, consult company price list, and respond to inquiry. Vendors are not required to type, sign, or mail anything. An average salary for vendor/salesperson is estimated to be $16.04 an hour. This is based on the rate used in the previous clearance multiplied by a factor of 3% per year to reflect wage increases since 1996. The total number of responses is derived by doubling the total number of purchase orders issued by the Agency in the preceding 12 month period. The total number of purchase orders issued was doubled to reflect the historical average of receiving at least two responses per oral or written purchase order. Normally, at least three vendors are contacted, but depending upon dollar value, an average of two information collections per award has been estimated. Therefore, the estimated total annual burden is summarized as follows: *Total Annual Burden Dollars:* $3.90 per response times 37,492 responses = $146,219; *Total Annual Burdens Hours:* 15 minutes per response times 37,492 responses = 9,373 hours. No capital/start-up costs or operation and maintenance costs are anticipated.

(3) Contractor Cumulative Claim and Reconciliation, 1900–10, EPA ICR No. 0246.07, OMB Control No. 2030–0016, expires 2/28/03.

Affected Entities: Entities potentially affected by this action are those holding cost reimbursable contracts with the Agency.

Abstract: At the completion of a cost reimbursement contract, contractors will report final costs incurred, including direct labor, materials, supplies, equipment, and other direct charges, subcontracting, consultant fees, indirect costs, and fixed fee. Contractors will report this information on EPA

Form 1900–10. EPA will use this information to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary to close-out the contract. Responses to the information collection are mandatory for those completing work under a cost reimbursement contract, and are required to receive final payment. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

Burden Statement: EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection because there has been no change in the information being collected and approximately the same number of contracts represents the total number of annual contracts that are closed-out. EPA estimates that the annual hourly burden will be 42.9 hours based on the following: Each response will take approximately 40 minutes, and EPA closes-out approximately 65 contracts per year. The annual dollar burden is estimated at $1,346.15 based on a combination of contractor employees providing the information. The total cost of the contractor provided information is estimated to be $20.71 for the 40 minute period. Minimal operation and maintenance costs are expected for photocopying and postage.

Dated: July 31, 2002.

Larry Wyborski,

Acting Manager, Policy and Oversight Service Center.

[FR Doc. 02–18989 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for Customer Satisfaction Surveys

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for Customer Satisfaction Surveys, EPA # 1711.04, OMB Control Number 2090–0019, expiring 03/31/03. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 24, 2002.

ADDRESSES: USEPA, Office of the Administrator, Office of Policy, Economics and Innovation, PPCD/CSP–1807T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. To fax requests and comments, call: 202–566–2200. E-mail comments to: *bonner.patricia@epa.gov.* When completed, the ICR application will be available electronically at: *http://www.epa.gov/icr/icr/1711.htm* and in printed form from 202–566–2216.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bonner, telephone: 202–566–2204; fax 202–566–2200.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which request or receive Agency information, products or services, or participate in Agency processes.

Title: Information Collection Request for Customer Satisfaction Surveys, OMB Control Number 2090–0019, EPA ICR Number 1711.04, expiring 03/31/03.

Abstract: Voluntary customer surveys will involve individuals who experience EPA services directly. Though EPA will use all available feedback gathering mechanisms to determine the level of customer satisfaction with attributes of its services, much of this collection will be electronic (60%). The EPA will use information obtained to assist in evaluating and improving service delivery and processes. The 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 EPA encourages comments to evaluate or suggest: whether the proposed collection of information is necessary for the proper performance of the functions of the Agency; the accuracy of the Agency's burden estimate, and the validity of the methodology and assumptions used; how to enhance the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including appropriate applications of information technology.

Burden: The average estimated respondent burden is 7.2 minutes. 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, including the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Time is the only direct respondent cost. Respondent cost was calculated using the March 2002 Bureau of Labor Statistics figure of $23.15 as the hourly wage (with benefits) for civilian wage and salary workers. The EPA estimates the following for the year 2003—2005:

Year	Respondents	Burden hours	Respondent cost
2003	39,823	4691	$2.72/response ($108,596.65).
2004	40,148	4821	$2.77/response ($111,606.15).
2005	40,073	4821	$2.78/response ($111,606.15).

Dated: July 18, 2002.

Betsy Shaw,

Director, Office of Environmental Policy Innovation, Office of Policy, Economics and Innovation, Office of the Administrator.

[FR Doc. 02–18995 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Acid Rain Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Acid Rain Program, OMB Control Number 2060–0258, Expiration date September 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 26, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1633.13 and OMB Control No. 2060–0258, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1633.13. For technical questions about the ICR contact Kenon Smith at (202–564–9164).

SUPPLEMENTARY INFORMATION:

Title: Acid Rain Program, OMB Control No. 2060–0258, EPA ICR No.1633.13, expiration date 9/30/2002. This is a request for extension of a currently approved collection.

Abstract: The Acid Rain Program was established under Title IV of the 1990 Clean Air Act Amendments. The program calls for major reductions of the pollutants that cause acid rain while establishing a new approach to environmental management. This information collection is necessary to implement the Acid Rain Program. It includes burden hours associated with developing and modifying permits, transferring allowances, obtaining allowances from the conservation and renewable energy reserve, monitoring emissions, participating in the annual auctions, completing annual compliance certifications, participating in the Opt-in program, and complying with NO_X permitting requirements. Most of this information collection is mandatory under 40 CFR parts 72 through 78. Some parts of it are voluntary or to obtain a benefit, such as participation in the annual auctions under 40 CFR part 73, subpart E. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on2/13/2002 (67 FR 6706); No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average91 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Electric Utilities and Industrial Sources.

Estimated Number of Respondents: 1,450.

Frequency of Response: Occasionally, Quarterly, and Annually.

Estimated Total Annual Hour Burden: 1,600,807 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $171,969,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the above addresses. Please refer to EPA ICR No. 1633.13 and OMB Control No. 2060–0258 in any correspondence.

Dated: July 18, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–18992 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed July 14, 2002 Through July 19, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020308, DRAFT EIS, SFW, AZ, Roosevelt Habitat Conservation Plan, Issuance of an Incidental Take Permit to Allow Continued Operation of Roosevelt Dam and Lake, Implementation, Gila and Maricopa Counties, AZ, *Comment Period Ends:* September 17, 2002, *Contact:* Sherry Barrett (520) 670–4617.

EIS No. 020309, FINAL EIS, AFS, CA, Star Fire Restoration Removal of Fire-Killed Trees, Road Reconstruction, and Associated Restoration, Eldorado National Forests (ENF) Georgetown Ranger District, Middle Fork American River, Chipmunk Ridge and the North Fork of Long Canyon, Placer County, CA, *Wait Period Ends:* August 26, 2002, *Contact:* Patricia Ferrell (530) 642–5146.

EIS No. 020310, DRAFT EIS, NRS, MO, Little Otter Creek Watershed Plan, Installation of One Multi-Purpose Reservoir and Development of Basic Facilities for Recreational Use, Implementation, Caldwell County, MO, *Comment Period Ends:* September 09, 2002, *Contact:* Roger A. Hansen (573) 876–0901.

EIS No. 020311, FINAL EIS, AFS, AK, Chugach National Forest, Proposed Revised Land and Resource Management Plan, Implementation,

Glacier, Seward and Cordora Ranger Districts, Kenai Peninsula Borough, AK, *Wait Period Ends:* August 26, 2002, *Contact:* Dave R. Gibbons (907) 743–9500. This document is available on the Internet at: *http://www.agdc.usgs.gov/cnp.*

EIS No. 020312, FINAL EIS, FRC, WA, Georgia Strait Crossing Pipeline (LP) Project, Construction and Operation, To Transport Natural Gas from the Canadian Border near Sumas, WA to US/Canada Border at Boundary Pass in the Strait of Georgia, Docket Nos. CP01–176–000 and CP01–179–000, Whatcom and San Juan Counties, WA, *Wait Period Ends:* August 26, 2002, *Contact:* Paula Felt (202) 208–1088. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 020313, FINAL EIS, BLM, NV, Leeville Mining Project, Propose to Develop and Operate an Underground Mine and Ancillary Facilities including Dewatering Operation, Plan-of-Operations/Right-of-Way Permits and COE Section 404 Permit, Elko and Eureaka Counties, NV, *Wait Period Ends:* August 26, 2002, *Contact:* Deb McFarlane (775) 753–0200.

EIS No. 020314, DRAFT EIS, AFS, OR, Granite Area Mining Projects, Propose to Approve Plans of Operation on 16 Mining Claims within the Granite Creek Watershed, Implementation, North Fork John Day Ranger District, Umatilla National Forest, Grant County, OR, *Comment Period Ends:* September 09, 2002, *Contact:* Robert Reed (541) 427–5335.

EIS No. 020315, FINAL EIS, FHW, DC, NC, VA, Southeast High Speed Rail Corridor, From Washington, DC to Charlotte, NC, To Provide a Competitive Transportation Choice to Traveler, Funding and Federal Permits, DC, VA, NC, *Wait Period Ends:* August 26, 2002, *Contact:* Nicholas L. Graf (919) 508–1917.

EIS No. 020316, DRAFT EIS, NAS, 00, PROGRAMMATIC—MARS Exploration Rover—2003 (MER–2003) Project, Continuing the Long-Term Exploration of MARS, Implementation, *Comment Period Ends:* September 09, 2002, *Contact:* David Lavery (202) 358–4800. This document is available on the Internet at: *http://www.spacescience.nasa.gov/admin/pubs/mereis/index.htm.*

EIS No. 020317, FINAL EIS, BLM, NV, 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, *Wait Period Ends:* August 26, 2002, *Contact:* Jerry Crockford (505) 599–6333.

Amended Notices

EIS No. 020281, DRAFT EIS, USA, UT, Activities Associated with Future Programs at US Army Dugway Proving Ground, Implementation, Tooele and Jaub Counties, UT, *Comment Period Ends:* August 19, 2002, *Contact:* Nicholas J. Cavallaro (703) 697–8995. Revision of FR Notice Published on 07/05/2002: CEQ Comment Period Ending 08/19/2002 has been Reestablished to 09/09/2002. Due to Incomplete Distribution of the DEIS at the time of Filing with USEPA under Section 1506.9 of the CEQ Regulations.

Dated: July 22, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–19008 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6631–5]

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 April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–L65396–ID Rating LO, Mann Creek Vegetation Management and Watershed Restoration Project, Implementation, Payette National Forest, Weiser Ranger District, Washington County, ID.

Summary: EPA expressed a lack of objections to the proposal.

ERP No. D–AFS–L65400–ID Rating LO, The West Gold Creek Project, Forest Management Activities Plan, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID.

Summary: EPA expressed a lack of objections to the proposal.

ERP No. D–FHW–D40317–VA Rating EC2, Capital Beltway Study, Transportation Improvements to the 14-mile Section Capital Beltway (I–495) between the I–95/I–395/I–495 Interchange and the American Legion Bridge, Fairfax County, VA.

Summary: EPA expressed environmental concern regarding impacts to residences and businesses and the inability of the proposed alternatives to provide a long-term solution to congestion problems. EPA has identified several issues that need to be more thoroughly explained in the Final EIS.

ERP No. D–FHW–F40406–00 Rating EC1, Ironton-Russell Bridge Replacement Project, LAW–93C–0.00, PID 17359, Structurally-Deficient and Functionally-Obsolete Bridge Replacement, Funding, NPDES, US Coast Guard Section 9 Bridge Permits and US Army COE Section 10 and 404 Permits Issuance, Lawrence County, OH and Greenup County, KY.

Summary: EPA recognizes that the preferred alternative will impact cultural resources, waters of the United States, hazardous material sites, and will require relocations. EPA requests the inclusion of clarifying information in the FEIS.

ERP No. D–FHW–J40155–CO Rating EC2, CO–9 (Frisco to Breckenridge) Highway Improvements Project to Improve a 14.5-kilometer (9-mile) stretch of CO–9 between the Towns of Frisco and Breckenridge to Decrease Travel Time, Improve Safety, Support Transportation needs of Local and Regional Travelers, Funding, Right-of-Way and US Army COE Section 404 Permits, Summit County, CO.

Summary: EPA expressed environmental concerns regarding direct, indirect and cumulative impacts to wetlands, Iynx, and the mountain ecosystem as a result of growth. EPA is concerned that adequate mitigation and environmentally-preferred alternatives were not fully addressed.

ERP No. D–FTA–G40170–TX Rating LO, Northwest Corridor Light Rail Transit (LRT) Line to Farmers Branch and Carrollton, Construction and Operation, NPDES and US Army COE Section 404 Permits Issuance, Dallas Area Rapid Transit, Dallas and Denton Counties, TX.

Summary: EPA has no objections to the selection of the preferred alternative as described in the DEIS, but requests that additional information be included in the FEIS to strengthen the overall NEPA analysis.

ERP No. D–NPS–K65239–AZ Rating EC2, Tonto National Monument, General Management Plan, New

Administrative Facility Construction within the Monument Boundaries, Implementation, AZ.

Summary: EPA expressed environmental concerns due to potential impacts to surface/ground water quality from the existing septic tank system and construction-related activities and because the EIS did not reflect a range of feasible mitigation to reduce potential adverse impacts consistent with pollution prevention guidance.

ERP No. D–USA–E11050–KY Rating LO, Blue Grass Army Depot, Destruction of Chemical Munitions, Design, Construction, Operation and Closure of a Facility to Destroy the Chemical Agent and Munitions, Madison County, KY.

Summary: EPA has no objections to the demilitarization proposal or the various technologies which will be used to accomplish this proposal.

ERP No. DS–AFS–L65232–OR Rating NS, Deep Vegetation Management Project, Implementation, Additional Information on Four Alternatives, Ochoo National Forest, Paulina Ranger District, Crook and Wheeler Counties, OR.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. DS–FHW–D40295–WV Rating EC2, New River Parkway Project, New and Relevant Information, Design, Construction and Management between I–64 Interchanges to Hinton, Raleigh and Summers Counties, WV.

Summary: EPA has environmental concerns regarding the mitigation measures proposed to offset the potential secondary and cumulative impacts likely to occur with project implementation. EPA requests additional information and details regarding the proposed measures.

Final EISs

ERP No. F–AFS–D65024–PA, Lewis Run Project, Management Strategies for Road Construction and Reconstruction, Timber Management Activities, Soil and Water Improvements, Wildlife Habitat Enhancements and Recreation Improvements, Implementation, Lewis Run Project Area, Bradford Ranger District, Allegheny National Forest, McKean County, PA.

Summary: EPA's prior comments on the draft EIS have been adequately addressed in this document. Therefore, EPA concurs with your analysis of impacts and findings.

ERP No. F–AFS–L36113–WA, Upper Charley Subwatershed Ecosystem Restoration Projects, Implementation, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA.

Summary: EPA has no objection to the proposed action, as this document adequately responded to EPA's previous comments on the draft EIS.

ERP No. F–AFS–L65382–ID, Meadow Face Stewardship Pilot Project, Implementation, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–L54004–WA, Sound Transit, Lakewood-to-Tacoma Commuter Rail and WA–512 Park and Ride Expansion, Construction and Operation, Central Puget Sound Regional Transit Authority, City of Tacoma and City of Lakewood, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 23, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–19009 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–8]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of two proposed settlement agreements. On July 15, 2002, the United States Environmental Protection Agency (''EPA'') filed one settlement agreement with the United States Court of Appeals for the District of Columbia Circuit, and the other settlement agreement with the United States Court of Appeals for the First Circuit. These two settlement agreements address challenges to two separate final actions EPA took, determining that the one-hour ozone national ambient air quality standard (''NAAQS'') no longer applied in different areas of the country. On August 8, 1998, Environmental Defense filed a petition for review pursuant to section 307(b) of the Act, 42 U.S.C. 7607(b), challenging EPA's June 5, 1998 rule determining that the one-hour ozone NAAQS no longer applied in approximately 2000 counties across the country. *Environmental Defense* v. *EPA,* No. 98–1363 (DC Cir.). On August 9, 1999, Appalachian Mountain Club filed a petition for review under section 307(b) of the CAA, challenging EPA's June 9, 1999, final rule determining that the one-hour ozone standard no longer applied in an additional ten areas. *Appalachian Mountain Club* v. *EPA,* No. 99–1880 (1st Cir.).

DATES: Written comments on the proposed settlement agreements must be received by August 26, 2002.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed settlement agreements are available from Phyllis J. Cochran, (202) 564–5566. On July 15, 2002, a copy of the proposed settlement agreement with Environmental Defense was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit and a copy of the proposed settlement agreement with Appalachian Mountain Club was filed with the Clerk of the United States Court of Appeals for the First Circuit.

SUPPLEMENTARY INFORMATION: Environmental Defense and Appalachian Mountain Club (collectively referred to as ''Petitioners'') allege that EPA acted contrary to law by determining that the one-hour ozone standard no longer applied to the areas in the challenged actions.

The EPA promulgated the one-hour ozone standard in 1979. On July 18, 1997, EPA promulgated a revised ozone standard—the eight-hour ozone standard. At that time, EPA also promulgated a regulation providing that the one-hour standard would ''no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard.'' 62 FR 38856, codified at 40 CFR 50.9(b) (revised on July 20, 2000). In part, EPA based this approach on its interpretation that the provisions of subpart 2 of part D of title I of the CAA applied only for purposes of the one-hour ozone standard. Thus, once an area attained the one-hour standard, EPA could determine the one-hour standard and thus, subpart 2, no longer applied to that area. Subsequently, EPA took three final actions in which it determined the one-hour standard no longer applied to most areas in the country. 63 FR 31014 (June 5, 1998); 63 FR 39432 (July 22, 1998); 64 FR 30911 (June 9, 1999). These actions are commonly referred to as ''revoking'' the one-hour standard.

The revised ozone standard was challenged and on May 14, 1999, the DC Circuit issued an opinion that, among other things, called into question EPA's authority to implement the revised standard. *American Trucking Assoc.* v. *EPA,* 175 F.3d 1027 (DC Cir. 1999). On rehearing, the Court made minor modifications to the portion of its decision regarding implementation, but did not change its earlier conclusions regarding EPA's implementation authority. *American Trucking Assoc.* v. *EPA,* 195 F.3d 4 (DC Cir. 1999). EPA sought review in the Supreme Court of several aspects of the DC Circuit's decision, including the ruling on EPA's implementation authority.

In the interim, due to the uncertainty regarding its implementation authority, on October 25, 1999, EPA proposed to reinstate the one-hour standard in all areas in which it had been revoked. 64 FR 57425. The preamble to that proposed rule provides a more thorough history of EPA's revocation rules and the DC Circuit rulings. *See* 64 FR at 57424–57425.

On July 20, 2000, EPA issued a final rule reinstating the one-hour standard in all areas in which it had been revoked. 65 FR 45182. EPA also modified the regulatory provision for determining the one-hour standard no longer applies to provide: ''* * * after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard.''

On February 27, 2001, the Supreme Court issued a decision, remanding the implementation issue to the Agency to develop a reasonable interpretation that provides a role for subpart 2 in implementing the eight-hour ozone NAAQS.

Each Settlement Agreement provides that upon finalization of the Settlement Agreement, the Parties will jointly seek a stay of the litigation pending the following actions. First, no later than three months following the finalization of the Settlement Agreement, EPA will propose a stay of its authority under 40 CFR 50.9(b) to determine that an area has attained the one-hour standard and that therefore the one-hour standard no longer applies in that area. The basis for the proposed stay would be for EPA to consider through rulemaking whether this provision in 40 CFR 50.9(b) should be modified in light of the Supreme Court's decision in *Whitman* v. *American Trucking Assoc.,* 121 S.Ct. 903 (2001). In that proposed stay, EPA would state that in the rulemaking regarding whether that provision in 40 CFR 50.9(b) should be modified, EPA would take comment on which, if any, implementation activities for an eight-hour ozone standard, including designations and classifications, would need to occur before EPA would determine that the one-hour ozone standard no longer applied to an area, and the effect of revising the ozone NAAQS on existing designations for the pollutant ozone. EPA would take final action on its proposed stay no later than 6 months after the proposal is published in the **Federal Register**. Each Settlement Agreement provides for the Petitioners to dismiss their case if, consistent with the proposal, EPA's final action (a) stays the effectiveness of the provision in 40 CFR 50.9(b) regarding the determination of whether an area has met the one-hour standard until such time as EPA completes a subsequent rulemaking determining whether that provision should be modified; and (b) commits to consider and address in the subsequent rulemaking any comments concerning (i) which, if any, implementation activities for a revised ozone standard (including but not limited to designation and classification of areas) would need to occur before EPA would determine that the one-hour ozone standard no longer applied to an area, and (ii) the effect of revising the ozone NAAQS on existing designations for the pollutant ozone.

The sole remedy for the Petitioners under the Settlement Agreement is the right to ask the Court to lift the stay of proceedings and establish a schedule for further proceedings regarding the Revocation Rule.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Settlement Agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Settlement Agreement will be final.

Dated: July 22, 2002

Lisa Friedman,

Associate General Counsel.

[FR Doc. 02–18993 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7251–1]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Request for Public Comment.

SUMMARY: The Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability under CERCLA of Specialty Castings Corporation (''Settling Party'') for response costs incurred and to be incurred at the Malvern TCE Superfund Site, East Whiteland and Charlestown Townships, Chester County, Pennsylvania. relating to the Malvern TCE Superfund Site (''Site'').

DATES: Comments must be provided by August 26, 2002.

ADDRESS: Comments should be addressed to Joan A. Johnson (3RC41), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and should refer to the Malvern TCE Superfund Site, East Whiteland Township, Chester County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Joan A. Johnson (3RC41), Assistant Regional Counsel, 215/814–2665, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

SUPPLEMENTARY INFORMATION: Notice of *de minimis* Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Malvern TCE Superfund Site, in East Whiteland Chester County, Pennsylvania. The administrative settlement is subject to review by the public pursuant to this Notice. This agreement has been approved by the Attorney General, United States Department of Justice, or his designee.

Specialty Castings Corporation (''Settling Party'') has agreed to pay $50 to the Hazardous Substances Trust Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public

during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. This amount to be paid by the Settling Party was based upon EPA's review of financial information relating to the Settling Party and a determination by EPA that the Settling Party has a limited ability to pay monies to settle EPA's claims. Monies collected from the Settling Party will be applied towards past and future response costs incurred by EPA or PRPs performing work at or in connection with the Site.

EPA is entering into this agreement under the authority of Sections 107 and 122(g) of CERCLA, 42 U.S.C. 9607 and 9622(g). Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with Settling Party in connection with the Malvern TCE Superfund Site, based upon a determination by EPA that Settling Party is responsible for 0.75 percent or less of the volume of hazardous substance sent to the Site.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from Joan A. Johnson (3RC41). Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, or by contacting Joan A. Johnson at (215) 814–2619.

Thomas C. Voltaggio,

Acting Regional Administrator, United States Environmental Protection Agency, Region III.

[FR Doc. 02–18988 Filed 7–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0040; FRL–7190–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 23, 2002 to July 5, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket ID number OPPT–2002–0040 and the specific PMN number, must be received on or before August 26, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0040 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules, and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPPT–2002–0040. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0040 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: *oppt.ncic@epa.gov*, or mail your

computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0040 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 23, 2002 to July 5, 2002, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 27 PREMANUFACTURE NOTICES RECEIVED FROM: 06/23/02 TO 07/05/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0795	06/24/02	09/22/02	CBI	(G) Oil-field additive	(G) Copolymer
P–02–0796	06/24/02	09/22/02	Nagase America Corporation	(G) Additive for a lubricant	(G) Polyglycerin alkyl ether
P–02–0797	06/24/02	09/22/02	CBI	(G) Oil-field additive	(G) Copolymer
P–02–0798	06/25/02	09/23/02	CBI	(G) Reactive hot melt adhesive	(G) Polyurethane/polyester copolymer
P–02–0799	06/25/02	09/23/02	CBI	(G) Coating additive	(G) Acrylic resin
P–02–0800	06/25/02	09/23/02	Arteva Specialties S.A.R.L. d/b/a Kosa	(S) Raw material in the manufacture of rigid polyurethane foam	(G) Aromatic polyester polyol
P–02–0801	06/26/02	09/24/02	CBI	(G) Encapsulant curative for open, non-dispersive use	(G) Castor oil, mixed esters with carboxylic acid anhydrides
P–02–0802	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0803	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0804	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0805	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0806	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0807	06/26/02	09/24/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic emulsion polymer
P–02–0808	06/27/02	09/25/02	Reichhold, Inc.	(G) Coating resin	(G) Amine salt of iscyanate, polymer with polyester, vegaetable oils, alkyleneamines, hydroxy substituted carboxylic acid and tetra hydroxy alkane
P–02–0809	06/27/02	09/25/02	CBI	(G) Lubricant base oil [open/non-dispersive use]	(G) Polyester polymer

I. 27 PREMANUFACTURE NOTICES RECEIVED FROM: 06/23/02 TO 07/05/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0810	06/27/02	09/25/02	CBI	(G) Processing aid	(G) Titanium-aluminum complex
P–02–0811	06/27/02	09/25/02	CBI	(G) Processing aid	(G) Titanium-aluminum complex
P–02–0812	06/27/02	09/25/02	Southwest Distributing Co., Inc.	(S) Flame retardant for polyurethane plastics	(G) Tri-block copolymer of e-caprolactone and dibromoneopentyl glyclol or hydroxy-terminated liquid copolymer of e-caprolactone and dibromoneopentyl glycol
P–02–0813	06/27/02	09/25/02	The Prince Manufacturing Company	(S) Adhesion promoter for polyolefin substrates	(G) Maleic anhydride and acryls modified polyolefine
P–02–0814	06/28/02	09/26/02	CBI	(G) Component of odorant compositions for highly dispersive applications	(G) Aliphatic unsaturated ketone
P–02–0815	07/01/02	09/29/02	CBI	(G) Ink-jet ink	(G) Copper phthalocyaninato-aminosulfonyl sulfo derivatives-sodium/ammonium salts
P–02–0816	07/02/02	09/30/02	3M Company	(G) Protective treatment	(G) Polyaromatic urethane
P–02–0817	07/02/02	09/30/02	CBI	(G) Component of a coating	(G) Polyamino, polyhydroxy polyether resin
P–02–0818	07/02/02	09/30/02	CBI	(G) Component of coating with open use	(G) Isocyanate amine adduct
P–02–0819	06/27/02	09/25/02	CBI	(G) Adhesives for open, non-dispersive use	(G) Polymer of alkylene polyester and methylenebis [isocyanatobenzene]
P–02–0820	06/27/02	09/25/02	CBI	(G) Adhesives for open, non-dispersive use	(G) Polymer of (alkylene ether)glycol, methylene bis[isocyanatobenzene] and toluene diisocyanate
P–02–0821	06/27/02	09/25/02	CBI	(G) Adhesives for open, non-dispersive use	(G) Polymer of (alkylene ether) glycol, methylene bis [isocyanatobenzene] and toluene diisocyanate

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 06/23/02 TO 07/05/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–02–0009	07/02/02	08/16/02	CBI	(G) Component of coating with open use	(G) Isocyanate amine adduct

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 16 NOTICES OF COMMENCEMENT FROM: 06/23/02 TO 07/05/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–02–0087	07/01/02	05/13/02	(S) Cyclopentanol, 2-cyclopentylidene
P–02–0089	06/26/02	06/07/02	(G) Alkyl silsesquioxane
P–02–0127	06/26/02	06/02/02	(S) 3-mercaptohexyl acetate
P–02–0185	07/02/02	06/07/02	(G) Aluminum chelate compound
P–02–0186	07/02/02	06/07/02	(G) Aluminum chelate compound
P–02–0216	06/25/02	06/14/02	(G) Diol
P–02–0311	06/25/02	05/25/02	(G) Acrylic copolymer
P–02–0312	07/02/02	05/30/02	(G) Poly(ester-ether)
P–02–0326	07/03/02	06/21/02	(S) Benzenamine, 2-nitro-4-(trifluoromethyl)-
P–02–0345	07/02/02	05/18/02	(G) Polyalkoxylated fatty acid
P–02–0367	07/02/02	06/11/02	(G) Polyalkoxylated phenol derivative
P–02–0377	06/25/02	06/13/02	(G) Polyamide
P–02–0450	06/27/02	06/21/02	(G) Polyether modified polyisocyanate, reaction product with diamine
P–02–0514	07/05/02	07/05/02	(G) Diethoxybenzenamine derivative, diazotized, coupled with aminonaphthalenesulfonic acid derivative, ammonium salt
P–96–0730	06/25/02	05/23/00	(G) Salt of a substituted alkylenepolyamine

III. 16 NOTICES OF COMMENCEMENT FROM: 06/23/02 TO 07/05/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–97–0044	06/25/02	01/18/99	(G) Dibasic acid / glycol polyester, organic acid capped

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 17, 2002.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–18994 Filed 7–25–02; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the August 8, 2002 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Thursday, August 1, 2002. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4009, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: July 24, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–19066 Filed 7–24–02; 11:09 am]

BILLING CODE 6705–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Academy's Course Evaluation Form.

Type of Information Collection: Extension of existing approved collection.

OMB Number: 3067–0233.

Abstract: This National Fire Academy Course Evaluation Form is used in all field two-day (off-campus) and State Weekend Program courses. The form is primarily used to assess the effectiveness of the course materials and instructor delivery. The demographic information is used in developing needs assessments for future course development/revision efforts.

Number of Respondents: 25,000.

Estimated Time per Respondent: .25 hour.

Estimated Total Annual Burden Hours: 6,250.

Frequency of Response: 1.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made 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, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: July 8, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–18949 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Academy Long-Term Evaluation Form for Supervisors, National Fire Academy Long-term Evaluation Form for Students.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0260.

Abstract: The National Fire Academy long-term evaluation forms " one for students and one for the student's supervisor—will obtain course specific feedback regarding impact of course content on job performance. The information is needed to improve instruction and content. Demographic data is needed to identify differentials in course impact.

Number of Respondents: 1,500 (Students 750/Supervisors 750).

Estimated Hours per Respondent: Student .33 and Supervisor .17.

Estimated Total Annual Burden Hours: 375.

Frequency of Response: 1.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made 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, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: July 8, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–18950 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1423–DR]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska, (FEMA–1423–DR), dated June 26, 2002, and related determinations.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 26, 2002:

The Alaska Native Communities of Alakanuk and Emmonak in the Lower Yukon Regional Educational Attendance Area for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18951 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Bandera, Bexar, Blanco, Gillespie, Kendall, Kerr, Medina, and Uvalde Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 USC 5174 and Categories A and B under the Public Assistance program).

Duval, McMullen, and Jim Wells Counties for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 USC 5174.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18952 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Callahan, Live Oak, San Patricio, and Zavala Counties for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 USC 5174.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18953 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1428–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1428–DR), dated July 12, 2002, and related determinations.

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July

12, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from severe storms and flooding on June 5, 2002, through June 13, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance, in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Caledonia, Franklin, Lamoille, and Orleans Counties for Individual Assistance.

Caledonia, Essex, Franklin, and Orleans Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18954 Filed 7–25–02; 8:45 am]

BILLING CODE 6718–02–P

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Cancellation of an Optional Form by the Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Optional Form because of low demand in the Federal Supply Service:

OF 171, Appointment Letter for Immigrant Visa Applicants.

This form will be converted to a State Department. You can request copies of the new form from: Department of State, A/RPS/DIR, 18th and G Streets, NW., Suite 2400, Washington, DC 20522–2201.

DATES: Effective July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202–312–9605.

Dated: July 17, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–18948 Filed 7–25–02; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following information collection was recently submitted to OMB:

1. *Proposed Project:* Application to the Board for Correction of Public Health Service (PHS) Commissioned Corps Records (PSC–54)—(OMB 0937–0095)—Extension.

An application is submitted by commissioned officers of the PHS Commissioned Corps, former officers, their spouses or heirs who appeal to the Board for Correction to request removal of an alleged error or injustice in an officer's record. The information submitted is used by the Board for Correction to determine if an error or injustice has occurred and to rectify such error or in justice. An appeal cannot be considered without the information furnished on this form. *Respondents:* Individuals or households and Federal employees. Total Number of Respondents: ten per calendar year. Number of Responses per Respondent: one response per request. Average Burden per Response: four hours. Estimated Annual Burden: 40 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection package listed above can be obtained by calling the PSC Reports Clearance Officer on (301) 443–0433. Written commens and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Irene S. West, PSC Reports Clearance Officer, Room 17A39, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 30 days of this notice.

Dated: July 18, 2002.

Curtis L. Coy,

Director, Program Support Center.

[FR Doc. 02–18974 Filed 7–25–02; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Public Health Emergency Preparedness; Statement of Organization, Function, and Delegation of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AA, Immediate Office of the Secretary, as last amended at 67 FR 1980, dated 1/15/2002; and at Chapter

AC, ''Office of Public Health and Science (OPHS),'' as last amended at 62 FR 33081–82, dated 6/18/1997. This reorganization will establish a new Chapter (AN), ''Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP)'' within the Office of the Secretary. OASPHEP will be headed by an Assistant Secretary for Public Health Emergency Preparedness (ASPHEP) as authorized under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. This reorganization will transfer the Office of Emergency Preparedness (ACK), Office of Public Health and Science, to OASPHEP, and rename the Office of Emergency Preparedness as the Office of Emergency Response. Further, this reorganization will transfer the Office of Public Health Preparedness from the Immediate Office of the Secretary to OASPHEP and rename it as the Office of BioDefense, and will place the Secretary's Emergency Operations Center in OASPHEP.

The changes, which will among other things, centralize related preparedness and response activities, are as follows:

I. Under Part A, Chapter AC, ''Office of Public Health and Science,'' make the following changes:

A. Under Section AC.10 Organization, delete the following: ''I. Office of Emergency Preparedness.''

B. Under Section AC.20 Functions, delete paragraph, ''I. Office of Emergency Preparedness (ACK),'' in its entirety.

II. Under Part A, Office of the Secretary, make the following changes:

A. Under Chapter AA, delete Chapter AAB, the ''Office of Public Health Preparedness,'' in its entirety.

B. Establish a new Chapter AN, ''Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP)'' to read as follows:

Office of the Assistant Secretary for Public Health Emergency Preparedness (AN)

AN.00 Mission

AN.10 Organization

AN.20 Functions

Section AN.00 Mission. On behalf of the Secretary, the Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) directs and coordinates HHS-wide efforts with respect to preparedness for and response to bioterrorism and other public health emergencies. OASPHEP will direct the National Disaster Medical System (NDMS) and any other emergency response activities within the Department of Health and Human Services that are related to bioterrorism and other public health emergencies. OASPHEP is responsible for ensuring a ''One-Department'' approach to developing such preparedness and response capabilities and directs and coordinates relevant activities of the OPDIVs.

Section AN.10 Organization: The Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) is headed by an Assistant Secretary for Public Health Emergency Preparedness (ASPHEP), who reports directly to the Secretary, and includes the following components:

- Immediate Office of the ASPHEP (ANA)
- Office of BioDefense (ANB)
- Office of Emergency Response (ANC)
- Secretary's Emergency Operations Center (ANE)

Section AN.20 Functions

1. *Immediate Office of the Assistant Secretary for Public Health Emergency Preparedness (ANA).* The Immediate Office of the ASPHEP provides executive direction to OASPHEP components. The ASPHEP is the principal advisor to the Secretary on matters relating to bioterriorism and other public health emergencies, and for coordinating interagency interfaces between HHS, other Departments, agencies, offices of the United States, State and local entities with responsibility for emergency preparedness, and directing activities relating to protecting the civilian population from acts of bioterrorism and other public health emergencies. The ASPHEP provides the necessary leadership and coordinates activities for emergency preparedness matters internal to the Office of the Secretary's components and represents the DHHS in working closely with the Federal Emergency Management Agency and other Federal departments and agencies. OASPHEP acts as the lead Federal agency for Emergency Support Function #8 within the Federal Response Plan.

2. *Office of BioDefense (ANB).* The Office of BioDefense (OB) is headed by a Director, who reports to the ASPHEP and supports his/her roles as the Secretary's principal advisor on matters relating to bioterrorism and public health emergencies, the Department's principal liaison with the Office of Homeland Security; and the principal representative of the Department to other Federal agencies and the private sector in all matters related to bioterrorism, and other public health emergencies. On behalf of the ASPHEP, OB directs and coordinates HHS Operating and Staff Divisions implementation of a comprehensive HHS strategy to protect the civilian population from acts of bioterrorism and other public health emergencies. In carrying out these responsibilities, the OB directs and coordinates the OPDIVs and STAFFDIVs to ensure the adequacy of HHS strategy for preparing, preventing, responding to, and recovering from acts of bioterrorism and other public health emergencies. The OB develops national plans and programs and executes necessary actions to ensure that HHS components are prepared to perform essential functions during major disasters.

3. *Office of Emergency Response (ANC).* The Office of Emergency Response (OER) is headed by a Director, who reports to the ASPHEP and serves as the principal advisor to the ASPHEP for emergency actions. OER provides staff support to the ASPHEP in the accomplishment of emergency preparedness responsibilities. In support of the ASPHEP, OER maintains the operational readiness required for timely and effective responses to Federal, State, and local government requests for social services, health and medical assistance following major disasters or terrorist incidents.

a. *The Division of Program Development (ANC1).* The Division of Program Development (DPD) is responsible for developing planning and implementation of processes to improve local response capabilities and the integration of national and local response resources. A key function of DPD is the development of Metropolitan Medical Response Systems. DPD also supports the Director of OER and the ASPHEP in coordinating activities with the Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, and the Food and Drug Administration and other OPDIVs to develop technical support systems to deal with the consequences of Weapons of Mass Destruction (WMD) terrorist events.

b. *The Division of Emergency Readiness and Operations (ANC2).* The Division of Emergency Readiness and Operations (DERO) is responsible for improving the range of emergency response capabilities and for assuring emergency response readiness. To accomplish these tasks, DERO supports the interdepartmental National Disaster Medical System (NDMS) Senior Policy Group, Directorate, and Directorate Staff; coordinates the NDMS Disaster Medical Assistance Teams (DMATs) and provides administrative support to DMAT personnel; manages the Rockville Emergency Operations Center

during emergencies; develops national WMD response capable DMATs; improves the communications infrastructure to support DMAT deployments; works with the Department of Veterans Affairs to assure appropriate pharmaceutical availability, especially for WMD incidents; and establishes Medical Support Units at the site of emergencies.

c. *The Division of Administration and Support (ANC3).* The Division of Administration and Support (DAS) is responsible for OER budget execution and formulation, personnel and procurement actions, as well as other administrative activities. To accomplish these tasks, DAS works with the OASPHEP Operations Officer, the Office of the Secretary Executive Office (OSEO) and OER Division Directors to develop solutions to administrative related problems and to develop more effective and efficient administrative support for accomplishing OER activities. DAS also provides staff support for the OASPHEP Operations Officer in coordinating cross-cutting activities, such as, the management of Regional Emergency Coordinator Work Plans and Regional Advice of Allowance.

4. *Secretary's Emergency Operations Center (AND).* The Secretary's Emergency Operations Center (SEOC) is the focal point of a secure command, control, and communications system to support the HHS Secretary and overall needs of the Department in the prevention, response and mitigation activities during major national security mobilizations such as a bioterrorism event. The SEOC ensures that all HHS emergency operations centers, emergency response teams, and other critical emergency personnel located throughout HHS are linked to the Secretary.

III. Continuation of Policy: Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Office of Public Health Preparedness (AAB) and the Office of Emergency Preparedness (ACK) Office of the Secretary, heretofore issued and in effect prior to the date of this reorganization are continued to full force and effect.

IV. Delegations of Authority: All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

V. Funds, Personnel and Equipment: Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: July 22, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–19006 Filed 7–25–02; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4037–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education—September 26, 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on September 26, 2002. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: The meeting is scheduled for September 26, 2002, from 9 a.m. to 4 p.m., e.d.s.t.

Deadline for Presentations and Comments: September 19, 2002, 12 noon, e.d.s.t.

ADDRESSES: The meeting will be held at the Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC, 20001, (202) 638–1616.

FOR FURTHER INFORMATION CONTACT: Nancy Caliman, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.hcfa.gov/events/apme/homepage.htm*) for additional information and updates on committee activities, or contact Ms. Caliman via E-mail at *ncaliman@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7849) and approved the renewal of the charter on January 18, 2001. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Joyce Dubow, Senior Policy Advisor, Public Policy Institute, AARP; Timothy Fuller, Executive Director, National Gray Panthers; John Graham IV, Chief Executive Officer, American Diabetes Association; Dr. William Haggett, Senior Vice President, Government Programs, Independence Blue Cross; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Brian Lindberg, Executive Director, Consumer Coalition for Quality Health Care; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Laurie Powers, Co-Director, Center on Self-Determination, Oregon Health Sciences University; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Dr. Susan Reinhard, Co-Director, Center for State

Health Policy, Rutgers University; Dr. Everard Rutledge, Vice President of Community Health, Bon Secours Health Systems, Inc.; Jay Sackman, Executive Vice President, 1199 Service Employees International Union; Dallas Salisbury, President and Chief Executive Officer, Employee Benefit Research Institute; Rosemarie Sweeney, Vice President, Socioeconomic Affairs and Policy Analysis, American Academy of Family Physicians; and Bruce Taylor, Director, Employee Benefit Policy and Plans, Verizon Communications.

The agenda for the September 26, 2002 meeting will include the following:

- Recap of the previous (May 23, 2002) meeting.
- *Medicare & You* Campaign update.
- Update on 2002 Medicare National Multi-Media and Education Campaign.
- CMS quality initiative.
- Briefing on *www.medicare.gov.*
- Listening session with the Administrator.
- Public comment.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Caliman by 12 noon, September 19, 2002. A written copy of the oral presentation should also be submitted to Ms. Caliman by 12 noon, September 19, 2002. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Caliman by 12 noon, September 19, 2002. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Ms. Caliman at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217(a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3). (Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–18613 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration), Department of Health and Human Services (HHS).

ACTION: Notice of modified or altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a system of records, ''Medicaid Statistical Information System (MSIS), System No. 09–70–6001.'' We propose to delete published routine use number 1 pertaining to a contractor, number 5 pertaining to employees of a state government, number 6 pertaining to another Federal agency, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). Disclosures previously covered by routine uses number 5, 6, and to the SSA will be accomplished by adding a new routine use number 2 which authorizes release of information in this system to ''another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent.'' We propose to modify the language of routine use number 1 to clarify the circumstances for disclosure under this routine use and retain the proposed placement of this routine use as number 1.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system of records is to establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to be used for the administration of Medicaid at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicare and Medicaid programs. Information in this system will also be used to: Support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, support research of policy issues, quality and effectiveness of care, and of epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the Agency related to this system of records, and combat fraud and abuse in certain Federally funded health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See *Effective Dates* section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 5, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Ron North, Technical Advisor, Division of Informational Analysis and Technical Assistance, Center for Medicaid and State Operations, CMS, Room S3–17–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–5651.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records

Statutory and Regulatory Basis For System of Records

In 1994, CMS established a system of records under the authority of § 1902 (a)(6) of the Social Security Act (the Act)(42 Code of Federal Regulations (CFR) 1396a(a)(6)), and the Balanced Budget Act (Public Law 105–33). Notice of this system, MSIS, System No. 09–70–6001,'' was published in the **Federal Register** at 59 FR 41327 (Aug. 11, 1994), an unnumbered routine use was added for SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information concerning Medicaid beneficiaries, physicians, and other providers of services to Medicaid beneficiaries. Information on beneficiaries consist of an assigned Medicaid identification number, social security number (SSN), health insurance claims number (HICN), date of birth, sex, ethnicity and race, medical services, equipment, and supplies for which Medicaid reimbursement is requested, and materials used to determine amount of benefits allowable under Medicaid. Information on physicians and other providers of services to the beneficiary consist of an assigned provider identification number, and information used to determine whether a sanction or suspension is warranted.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MSIS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of MSIS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.,* establish an accurate, current, and comprehensive database for administration of the Medicaid program at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicaid program.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MSIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper management of Medicare/Medicaid benefits; and/or

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. To assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require MSIS information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state.

SSA may require MSIS data to enable them to assist in the implementation and maintenance of the Medicare/Medicaid program.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, XIX and XXI of the Act, and for the administration of the Medicaid program.

Data will be released to the state only on those individuals who are eligibly enrollees, and beneficiaries under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require MSIS information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system of records.

3. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

MSIS data will provide for the research, evaluations, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicaid beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare/Medicaid beneficiaries and the policy that governs the care.

4. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MSIS information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The MSIS system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems,'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system

database configuration includes five classes of database users:

• Database Administrator class owns the database objects; *e.g.,* tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;

• Quality Control Administrator class has read and write access to key fields in the database;

• Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;

• Policy Research class has query access to tables, but are not allowed to access confidential individual identification information; and

• Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the MSIS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

• User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.

• Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.

• Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.

• Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and workstations.

• Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards:

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of MSIS data. MSIS information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of MSIS data.

CMS will take precautionary measures (*see* item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: July 5, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–6001

SYSTEM NAME:

Medicaid Statistical Information System (MSIS), HHS/CMS/CMSO.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Medicaid beneficiaries, and physicians and other providers involved in furnishing services to Medicaid beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system include an assigned Medicaid identification number, social security number (SSN), health insurance claims number (HIC), date of birth, sex, ethnicity and race, medical services, equipment, and supplies for which Medicaid reimbursement is requested, and materials used to determine amount of benefits allowable under Medicaid. Information on physicians and other providers of services to the beneficiary consist of an assigned provider identification number, and information used to determine whether a sanction or suspension is warranted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this system of records is given under § 1902 (a)(6) of the Social Security Act (42 United States Code (U.S.C.) § 1396a (a)(6), and the Balanced Budget Act (Public Law 105–33).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to establish an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to be used for the administration of Medicaid at the Federal level, produce statistical reports, support Medicaid related research, and assist in the detection of fraud and abuse in the Medicaid program. Information in this system will also be used to: support regulatory and policy functions performed within the

Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, support research of policy issues, quality and effectiveness of care, and of epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the Agency related to this system of records, and combat fraud and abuse in certain Federally funded health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine use in this system meets the compatibility requirement of the Privacy Act.

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information that will be maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper management of Medicare/Medicaid benefits; and/or

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

6. To CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the assigned beneficiary identification number, SSN, HICN, and the assigned physician or other providers of services identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the MSIS system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs ten years after the final determination of the case is completed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Informational Analysis and Technical Assistance, Center for Medicaid and State Operations, CMS, Room S3–18–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system

manager who will require the system name, identification number, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

CMS obtains the identifying information contained in this system from state Medicaid agencies, or Medicaid Management Information Systems maintained by the individual states, and information contained on CMS Form 2082.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18170 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, ''Individuals Authorized Access to the CMS Data Center, System No. 09–70–0064.'' We propose to amend the name of this system to more accurately reflect the purpose of this system to read ''Individuals Authorized Access to the CMS Computer Services (IACS).'' We propose to delete an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). Disclosure of data from this system to the SSA is no longer necessary since SSA has been established as a separate agency outside of the HHS and a routine use for the purpose stated is no longer necessary.

The security classification previously reported as ''None'' will be modified to reflect that data in this system are considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide clarity to CMS intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take this opportunity to update any sections of this SOR that were affected by the recent reorganization and to modify language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is for assigning, controlling, tracking, and reporting authorized access to and use of CMS's computerized information and resources. Information in this system will be used will be used to support regulatory and policy functions performed within the Agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and to support litigation involving the Agency related to this SOR. We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the Aroutine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. See *Effective Dates* section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 19, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Kenneth Olga, Technology Services Group, Office of Information Services, CMS, Room N1–19–18, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–4067.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis For SOR

In 1994, CMS established an SOR under the authority of 5 U.S.C. 5552(e)(10). Notice of this system, ''Individuals Authorized Access to the CMS Data Center, System No. 09–70–0064,'' was published at 59 **Federal Register** (FR) 41330 (Aug. 11, 1994).

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains the name, work address, work phone number, an assigned user identification (UserID) number, an associated password, and the software system(s) that the individual is authorized to use.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release IACS information that can be associated with an individual as provided for under ''Section III.A. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with IACS information and identifiers. Non-identifiable data includes individual records with IACS information and masked identifiers or IACS information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the

purpose of IACS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., developing and refining payment systems and monitoring the quality of care provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IACS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when

a. The Agency or any component thereof; or

b. Any employee of the Agency in his or her official capacity; or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information''.

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The IACS system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: The Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and the Office and Management and Budget (OMB) Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems. Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against

excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To insure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the IACS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log on—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System on Individual Rights

A. CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of IACS. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information in this system to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: July 22, 2002.

Thomas A. Scully,

Administrator, , Centers for Medicare & Medicaid Services.

09–70–0064

SYSTEM NAME:

''Individuals Authorized Access to the Centers for Medicare & Medicaid Services (CMS) Computer Services (IACS), HHS/CMS/OIS, System No. 09–70–0064.''

SECURITY CLASSIFICATION:

Level 3 Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with an approved need for access to the computer resources and information maintained by CMS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name, work address, work phone number, an assigned user identification (UserID) number, an associated password, and the software system(s) that the individual is authorized to use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under 5 U.S.C. 552(e)(10).

PURPOSE(S):

The primary purpose of the SOR is for assigning, controlling, tracking, and reporting authorized access to and use of CMS's computerized information and resources. Information in this system will be used to support regulatory and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and to support litigation involving the Agency related to this SOR.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used

for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine use in this system meets the compatibility requirement of the Privacy Act. This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information''.

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information that will be maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. the Agency or any component thereof; or

b. any employee of the Agency in his or her official capacity; or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. the United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the name and assigned UserID number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the IACS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies; and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs three years from the time the individual no longer requires access to the HDC.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Technology Services Group, Office of Information Services, CMS, Room N1–19–18, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–4067.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of birth, and sex.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from applications submitted by the individuals requiring access to computer services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–19022 Filed 7–25–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records Notice

AGENCY: Office of Family Assistance (OFA) and the Office of Planning, Research, and Evaluation (OPRE), ACF, DHHS.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Family Assistance and the Office of Planning, Research and Evaluation, Administration for Children and Families (ACF), are publishing a notice of a new system of records entitled TANF (Temporary Assistance for Needy Families) Data System. The collection of the data elements for this system is authorized by title IV–A of the Social

Security Act (Act) (42 U.S.C. 601–619). The TANF Data System includes the data elements on individual TANF recipients that States report under sections 403 and 411 of the Act.

Information in the TANF Data System is used for three major purposes: (1) To determine whether States are meeting certain requirements prescribed by the Act; (2) to report to Congress on the TANF program; and (3) to compute the scores and rank States on their performance in assisting TANF recipients to obtain and retain employment in connection with the award of High Performance Bonus funds.

DATES: We invite interested parties to submit comments on this notice within August 26, 2002. Pursuant to paragraph 4c of Appendix I to Office of Management and Budget (OMB) Circular No. A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, we have sent copies of this notice as required by 5 U.S.C. 552(a) to the Committee on Government Reform and Oversight of the U.S. House of Representatives, the Committee on Governmental Affairs of the U.S. Senate, and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The new system of records is proposed to be established effective September 2, 2002, unless ACF receives comments that would result in a contrary determination.

ADDRESSES: Please address comments to: Sean D. Hurley, Director, Division of TANF Data Collection and Analysis, Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW.; Suite 706, Washington, DC 20447, Phone: 202–401–9297, Fax: 202–205–3598, E-mail: *shurley@acf.hhs.gov.*

Comments received will be available for public inspection at the address specified above from 9 a.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sean D. Hurley, Director, Division of Data Collection and Analysis, at the above address.

SUPPLEMENTARY INFORMATION: The Temporary Assistance for Needy Families program under title IV–A of the Act became effective on August 22, 1996. In order to monitor the progress of States (*i.e.,* the 50 States, District of Columbia, Puerto Rico, U.S. Virgin Islands and Guam) implementing the TANF program, Congress specified mandatory data collection and reporting requirements in section 411 of the Act. This section also requires the Department to transmit to Congress an annual report on the Department's findings as to whether States are:

- Meeting the work participation rates; and,
- Increasing the employment and earnings of needy families, increasing child support collections, and decreasing out-of-wedlock pregnancies and child poverty.

The annual report must also describe:

- The demographic and financial characteristics of families applying for, receiving, and becoming ineligible for TANF;
- The characteristics of State TANF programs; and,
- The trends in employment and earnings of needy families with minor children living at home.

In addition to the foregoing requirements, the statute also allows (but does not require) States to compete for an award of High-Performance Bonus funds. These funds are awarded to applicant States which successfully assist TANF recipients in obtaining and retaining employment.

Until the regulations for the TANF program and the High Performance Bonus system were finalized, including the data collection requirements, States were required to meet minimal reporting requirements under the Emergency TANF Data Report, which did not include any individual identifiers.

Final rules published on April 12, 1999, expanded TANF data collection and reporting requirements. These requirements, published at 45 CFR part 265, required States to report specific individual identifiers, including the Social Security Numbers (SSNs) of TANF recipients collected pursuant to section 1137 of the Act. States are required to collect the prescribed data elements monthly and report the data quarterly to ACF. States may report these data elements on the entire universe of families that receive assistance in a reporting month or for a representative sample of recipients. Approximately 30 States currently report universe data.

Final rules regarding the award of TANF High Performance Bonus (HPB) funds were published on August 30, 2000 and amended on December 4, 2000 and May 10, 2001. These rules, which are found at 45 CFR part 270, specify the data and other information which States must report in order to compete for bonus awards.

Consistent with the requirements noted above, the Office of Family Assistance and the Office of Planning, Research, and Evaluation propose to establish a new system of records: The TANF Data System (TDS). In addition, since States that wish to compete on the four work measures in the HPB system in FY 2002 or later are required to provide the Social Security Numbers (SSNs) of all adult recipients in each fiscal quarter, such SSNs will also be included in the TDS. These SSNs are used to obtain information on the employment and earnings of TANF recipients by matching them with the National Directory of New Hires (NDNH) data set maintained by the Office of Child Support Enforcement (OCSE), ACF.

The records in this system will be maintained in a secure manner compatible with their content and use. Approved users will be required to adhere to the provisions of the Privacy Act. The System Manager will control access to the data.

Dated: June 19, 2002.

Andrew S. Bush,

Director, Office of Family Assistance.

Dated: June 18, 2002.

Howard Rolston,

Office of Planning, Research, and Evaluation.

09–90–0151

SYSTEM NAME:

Temporary Assistance for Needy Families (TANF) Data System, Administration for Children and Families, Department of Health and Human Services.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The TANF data are reported by the individual States for each (Federal) fiscal quarter. (The term State is used in this notice to refer to the 50 States, the District of Columbia, and the jurisdictions of Puerto Rico, the U.S. Virgin Islands, and Guam). States (CIT) of the National Institutes of Health (NIH) located at Building 12A, Bethesda, MD 20892. The State data are pooled to create a national database for each quarter, which is also kept in the computer system of CIT. The whole system is maintained under the technical and management control of: (1) The Office of Information Systems, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447; and (2) the Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The TANF Data System (TDS) contains information on: (1) Members of families (as defined by regulation at 45 CFR 265.2) who received assistance under the TANF program in any month, and (2) members of families (as defined by regulation at 45 CFR 265.2) in which an individual was assisted by a Separate State Program (SSP) which is not subject to Federal work or time limit requirements but for which expenditures are or will be claimed by the State to satisfy TANF Maintenance of Effort (MOE) requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are three distinct groups of data in the TDS: family-level data; adult-level or minor-child-head-of-household data; and child data.

Family level data maintained in the TDS may include the following items of information on every family that received assistance during one or more months: State Federal Information Processing Standard (FIPS) code; Region code; county FIPS code; report year and month; stratum code; case identification number (assigned by the State); Zip code; funding stream; disposition status; new applicant status; number of family members; type of family for work participation; receipt of subsidized housing; receipt of medical assistance; receipt of food stamp assistance; amount of food stamp assistance; receipt of subsidized child care; amount of subsidized child care; amount of child support; amount of family's cash resources; cash, or cash equivalent, amount of assistance and number of months of that assistance; TANF child care (amount, number of children covered, and number of months of assistance); transportation assistance (amount and number of months of assistance); transitional services (amount and number of months of assistance); other assistance (amount and number of months of assistance); amount of reductions in assistance; reason for assistance reductions (sanctions, recoupment of prior over payment, and other); waiver evaluation experimental and control group status; exemption status from the federal time-limit provisions; and new child-only-family status.

Adult-level or minor child-head-of-household data maintained in the TDS may include: case identification number (same as the family's identification number); report year and month, State FIPS code; family affiliation; non-custodial parent indicator; date of birth; SSN; race and ethnicity; gender; receipt of disability benefits; marital status; relationship to head of household; parent-with-minor-child-in-the-family status; needs of a pregnant woman; education level; citizenship; cooperation with child support; number of months countable towards Federal time-limit; number of countable months remaining under State's time-limit; exemption status of the reporting month from the State's time-limit; employment status; work participation status; unsubsidized employment hours; subsidized private and public sector employment hours; work experience hours; on-the-job training hours; job search and job readiness assistance hours; community service program hours; vocational educational training hours; hours of job skills training directly related to employment; hours of education directly related to employment for individuals with no high school diploma or certificate of high school equivalency; hours of satisfactory school attendance for individuals with no high school diploma or certificate of high school equivalency; hours of providing child care services to an individual who is participating in a community service program; hours of additional work activities permitted under a Waiver demonstration; hours of other work activities; required hours of work under a Waiver demonstration; amount of earned income; and amount of unearned income (earned income tax credit, Social Security benefit, Supplemental Security Income (SSI), worker's compensation, and other unearned income).

Child data (i.e., data pertaining to every child in a recipient TANF family) may include: case identification number (same as the family's identification number); State FIPS code; report year and month; family affiliation; date of birth; SSN; race and ethnicity; gender; receipt of disability benefits; relationship to head of household; parent-with-minor-child-in-the-family status; education level; citizenship; amount of unearned income (SSI and other).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority for the collection and maintenance of the system is contained in Title IV-A of the Social Security Act (Act), 42 U.S.C. 601–619. TANF data collection and reporting regulations are found in 45 CFR part 265. Legal authority for the collection of information for the High Performance Bonus award program is found in section 403 of the Social Security Act and in 45 CFR part 270.

PURPOSE(S):

Information in the TANF Data System is used for three major purposes: (1) To determine whether States are meeting certain requirements prescribed by the Act, including prescribed work and time-limit requirements; (2) to compile information used to report to Congress on the TANF program; and, (3) to compute State scores on work measures and rank States on their performance in assisting TANF recipients to obtain and retain employment in connection with the award of High Performance Bonus funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records containing data collected pursuant to section 411 of the Social Security Act may be disclosed :

1. To supply raw or tabulated data without personal identifiers in response to specific requests from private and public entities.

2. To supply raw (untabulated) data for research purposes in response to requests from researchers who have agreed in writing not to use such data to identify any individual whose information is included therein.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

States electronically transmit the TANF data for each fiscal quarter to a computer in the Center for Information Technology (CIT) of the National Institute of Health. The data sets received from the States in accordance with the requirements of section 411 of the Social Security Act and 45 CFR part 265 are pooled to create a national database for each fiscal quarter. The national database thus created for a given fiscal year is also kept in a computer disk on the mainframe of the CIT for up to 24 months after the end of such fiscal year. Afterwards, the database is copied to compact discs (CDs) and securely kept in ACF under lock and key or on personal computers by individuals whose access to the CDs has been authorized by OPRE and/or the ACF's Office of Information Services, Office of Administration.

Although SSNs of adult TANF recipients collected from States which have chosen to compete for High-Performance bonuses are stored on the CIT as well, they are also provided to Office of Child Support Enforcement for

matching with records of individual employment information contained in the National Directory of New Hires portion of OCSE's Location and Collection System, No. 09–90–0074, last published at **Federal Register**, Vol. 65, No. 187, pages 57817–57820, dated September 26, 2000. Thereafter, match results are transmitted back to OPRE without SSNs in a form which is not individually identifiable and the SSNs supplied to perform the match are destroyed by OCSE.

RETRIEVABILITY:

The national database kept in the CIT is accessed by authorized users of the data following established procedures. The authorized users are selected individuals in the Office of Administration, ACF (including its contractors who may handle processing of the data and the creation of the national database), and selected individuals in the Division of Data Collection and Analysis, Office of Planning, Research, and Evaluation, ACF (who perform analyses of the data). The database is accessed and downloaded by authorized individuals to secure personal computers (PCs). Sharing of the data downloaded to individual PCs is allowed only with permission of the System Manager. Although all data elements in the database can be retrieved, the SSNs are not generally included in any retrieval, since they are not used in the routine analyses of the data.

SAFEGUARDS:

1. *Physical security:* The CIT of NIH, as a U.S. government facility, abides by all U.S. government policies with regard to the physical security of the data kept there. The CIT has the following: an uninterruptible power supply; climate control; a central backup and recovery system; a disaster recovery program; security procedures for data access; and normal physical and system security procedures (restricted physical access to computer machine rooms and output handling areas, which is enforced by a round-the-clock security guard stationed at the main entrance to the area, valid government identification (ID) badge or photo identification and registration with the security guard to obtain a temporary entry badge for a specifically authorized purpose, such as maintenance service or repair of equipment, etc.). The outputs generated at the facility are placed in locked boxes that can be accessed only by users knowing the correct box access code. To ensure physical security of data kept on tapes or other portable media, the CIT requires that the sponsor of an account authorize the removal of them from the CIT. When such items are taken out, the person receiving the items provides the following to the production unit staff of the CIT: name and signature; ID badge number; driver's license number and State; and organization's (which is represented by the person) name and phone number. Only after confirming these items of information by the production unit staff will the items be given to the person. Data older than 24 months is downloaded by authorized individuals to secure PCs, then copied to CDs which are then kept under lock and key. After copying the data to CDs, the data on the PCs are deleted.

2. *Authorized access:* Access to the data is strictly regulated with passwords and other controls. Only individuals whose work responsibilities specifically include accessing the data system (either for processing or for analysis) are allowed to access these data. They include designated individuals (including contractors) in the Division of Application Development Services, Office of Information Services, Office of Administration, ACF (mostly for processing incoming data and database creation), and designated individuals in the Division of Data Collection and Analysis, OPRE, ACF.

3. *Procedural and technical safeguards:* The individuals who are authorized to access the data have been adequately instructed on the privacy and confidentiality of the data, and they have been trained to handle the data in such a manner as to protect its privacy and confidentiality. Release of any personal identification particulars by these individuals is strictly forbidden, and release of even tabulated data is allowed only under specific authorization. Established clearance procedures must be observed before any release of the information contained in the data system.

RETENTION AND DISPOSAL:

The data transmitted by a State for a fiscal quarter to the CIT's computer are backed up to a computer tape after the initial processing of the data. The backed-up version of the data is kept only for a period of 30 days.

The data transmitted by the States for a fiscal quarter, after processing and acceptance, are pooled to create a national database for the quarter. The national database is stored in the CIT's computer for up to 24 months after the end of the fiscal year. Afterwards, the database is copied to a compact disc, and the original data in CIT's computer is scratched. The data on the compact disc is securely maintained by ACF for up to 20 years in order to facilitate research on caseload trends, changes in the characteristics of TANF recipients, or other pertinent research. The eventual disposal of the data will be by means of physical destruction of the CD's containing the data. The Office of Information Systems of the Office of Administration and OPRE, ACF, are responsible for the retention and disposal of the data system.

The SSNs obtained for the HPB award program for a performance year, although initially kept in an electronic file in the CIT, are erased after identifying the States that merited awards for that performance year. The erasing of these SSN data file will be done within a year after the award year, which immediately follows the performance year. Aggregate data files based on information provided for the HPB award program are also erased.

SYSTEM MANAGER(S) AND ADDRESS:

1. Director, Division of Applications Development Services, Office of Information Services, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

2. Director, Division of Data Collection and Analysis, Office of Planning, Research, and Evaluation, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to either of the System Managers noted above. The Privacy Act provides that, except under certain conditions specified in the law, only the subject of the records may have access to them. All requests must be submitted in the following manner: Identify the system of records that is desired to be searched; have the request for search notarized certifying the identity of the requestor; and indicate that the requestor is aware that the knowing and willful request for or acquisition of Privacy Act record under false pretenses is a criminal offense subject to a $10,000 fine. The letter of request should also provide sufficient particulars to enable the System Manager to distinguish among records on subject individuals with the same name.

RECORD ACCESS PROCEDURES:

Write to either of the System Managers listed above to obtain access to the records. Requestors should provide a detailed description of the record contents they are seeking.

CONTESTING RECORD PROCEDURES:

Write to either of the System Managers listed above, at the address noted, identifying the record and specifying the information to be contested and corrective action sought, together with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

All items of information contained in the system of records are obtained from the States.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18885 Filed 7–25–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0563]

Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc.; Revocation of U.S. License Nos. 1030, 1031, 1032, and 1033

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the biologics licenses (U.S. License Nos. 1030, 1031, 1032, and 1033) issued to Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc., for the manufacture of Source Plasma. These establishments did not respond to a notice of opportunity for a hearing on a proposal to revoke their licenses.

DATES: The revocation of the biologics licenses (U.S. License Nos. 1030, 1031, 1032, and 1033) is effective July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Earline Robinson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is revoking the biologics license (U.S. License No. 1030) issued to Beauregard Plasma, Inc., P.O. Box 96, Hwy. 27, DeQuincy, LA 70633; the biologics license (U.S. License No. 1031) issued to Jackson Plasma, Inc., P.O. Box 788, Hwy. 68, Jackson, LA 70748; the biologics license (U.S. License No. 1032) issued to Baton Rouge Plasma, Inc., P.O. Box 174, Hwy. 74, St. Gabriel, LA 70776; and the biologics license (U.S. License No. 1033) issued to Claiborne Plasma, Inc., Route 2, Box 75, Homer, LA 71040, for the manufacture of Source Plasma. FDA initiated proceedings to revoke the licenses because authorized FDA employees were unable to gain access to any of the establishments to carry out required inspections of the facilities, and manufacturing of products had been discontinued to an extent that meaningful inspections could not be made.

In a certified, return-receipt letter dated May 11, 2001, FDA notified the authorized official of the establishments that attempts to conduct inspections of the establishments were unsuccessful because the establishments were apparently no longer in operation and had apparently discontinued the manufacture of Source Plasma. The letter advised the authorized official that, under 21 CFR 601.5(b)(1)(i) and (b)(1)(ii) (formerly codified as 21 CFR 601.5(b)(1) and (b)(2)), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection under 21 CFR 600.21 or that manufacturing of a product has been discontinued to an extent that a meaningful inspection could not be made, the Commissioner of Food and Drugs shall institute proceedings for license revocation. In the same letter, FDA notified the establishments of FDA's intent to revoke U.S. License Nos. 1030, 1031, 1032, and 1033 and its intent to offer an opportunity for a hearing.

Under 21 CFR 12.21(b), FDA published in the **Federal Register** of January 9, 2002 (67 FR 1223), a notice of opportunity for a hearing on a proposal to revoke the license of Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc. In the notice, FDA explained that the proposed license revocations were based on the inability of authorized FDA employees to conduct a meaningful inspection of the facilities because they were no longer in operation, and noted that documentation in support of license revocation had been placed on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The notice provided the establishments 30 days to submit a written or electronic request for a hearing and 60 days to submit any data and information justifying a hearing. The notice provided other interested persons 60 days to submit written or electronic comments on the proposed revocation. The notice also stated that a licensee's failure to file timely written requests for a hearing constitutes an election by the licensee not to avail itself of the opportunity for a hearing concerning the proposed license revocation. The establishments did not respond within the 30-day time period with a written or electronic request for a hearing, and under 21 CFR 12.21(b), the 30-day time period prescribed in the notice of opportunity for a hearing may not be extended. No other comments were received.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the biologics licenses (U.S. License Nos. 1030, 1031, 1032, and 1033), issued to Beauregard Plasma, Inc., Jackson Plasma, Inc., Baton Rouge Plasma, Inc., and Claiborne Plasma, Inc., respectively, are revoked, effective July 26, 2002.

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19017 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0533]

Determination That Cyanocobalamin Injection Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that cyanocobalamin injection (Rubramin PC), 1 milligram (mg)/milliliter (mL) in a 10 mL vial (cyanocobalamin injection) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for cyanocobalamin injection.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Borgerding, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price

Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (21 CFR 314.161(a)(1)). FDA may not approve an ANDA that does not refer to a listed drug.

Cyanocobalamin injection (Rubramin PC), 1mg/mL in a 10 mL vial is the subject of NDA 6–799. On November 28, 1951, Bristol-Myers Squibb Co. received approval to market cyanocobalamin injection. Cyanocobalamin is vitamin B_{12}. Subsequently, Bristol-Meyers Squibb Co. withdrew cyanocobalamin injection from sale.

On November 29, 2001, PharmaForce, Inc., submitted a citizen petition (Docket No. 01P–0533) under 21 CFR 10.30 to FDA requesting that the agency determine whether cyanocobalamin injection was withdrawn from sale for reasons of safety or effectiveness. FDA has reviewed its records and determined that cyanocobalamin injection was not withdrawn from the market for safety or efficacy reasons. Accordingly, the agency will list cyanocobalamin injection in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to cyanocobalamin injection may be approved by the agency.

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18976 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0023]

Determination of Regulatory Review Period for Purposes of Patent Extension; Definity

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Definity and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Definity (perflutren lipid microspheres). Definity is indicated for use in patients with suboptimal echocardiograms to opacify the left ventricular chamber and to improve the delineation of the left ventricular endocardial border. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Definity (U.S. Patent No. 5,527,521) from Dupont Contrast Imaging, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Definity represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Definity is 2,160 days. Of this time, 1,193 days occurred during the testing phase of the regulatory review period, while 967 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: September 3, 1995. The applicant claims September 13, 1995, as the date the investigational new drug application (IND) became

effective. However, FDA records indicate that the IND effective date was September 3, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 8, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Definity (NDA 21–064) was initially submitted on December 8, 1998.

3. *The date the application was approved*: July 31, 2001. FDA has verified the applicant's claim that NDA 21–064 was approved on July 31, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,418 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 24, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 22, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–18975 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0254]

Draft Guidance for Industry on Inhalation Drug Products Packaged in Semipermeable Container Closure Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Inhalation Drug Products Packaged in Semipermeable Container Closure Systems.'' This draft guidance is intended to provide guidance for industry on inhalation drug products that are packaged in semipermeable primary container closure systems. This draft guidance also covers related chemistry, manufacturing, and controls (CMC) considerations. FDA is issuing this draft guidance to address public health concerns raised by the possible leaching and entry of chemical contaminants into inhalation drug products packaged in semipermeable primary container closure systems.

DATES: Submit written or electronic comments on the draft guidance by October 24, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Badrul Chowdhury or Guirag Poochikian, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Inhalation Drug Products Packaged in Semipermeable Container Closure Systems.'' Inhalation drug products used in the treatment of patients with asthma or chronic obstructive pulmonary disease may be packaged in semipermeable primary container closure systems, such as low-density polyethylene. Over time, chemical impurities can accumulate in an inhalation drug product packaged in semipermeable primary container closure systems as a result of the degradation of formulation components, leaching from the container closure system, and/or entry from the local environment. Volatile chemical components from the local environment, including the secondary packaging, can react with the drug product formulation to form different impurities. The clinical consequences of chemical contamination of inhalation drug products are uncertain; however, given the known sensitivity of patients using these products to respiratory irritants and sensitizers, it is possible that these chemical contaminates may induce bronchospasm. Because bronchospasm is also the indication for which the inhalation drug product is used, it is difficult in the clinical setting to establish whether bronchospasm after the use of a drug product may be due to chemical contaminants or to a patient's underlying disease. Since it is possible that chemical contaminants in the inhalation drug products used to treat critically ill patients could adversely affect such patients, FDA is issuing this draft guidance to provide recommendations for inhalation drug products packaged in semipermeable primary container closure systems. This draft guidance provides recommendations on: (1) Appropriate protective secondary packaging, (2) embossing and/or debossing of the primary container in lieu of paper labels, and (3) general guidance on the number of unit-dose containers to be contained within each protective secondary package. These recommendations apply to drug products, both those in development and those already approved and marketed in the United States.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on inhalation drug products packaged in semipermeable container closure systems. It does not create or confer any

rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. 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 draft guidance 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/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19020 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Training Program for Regulatory Project Managers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), is announcing the continuation of the Regulatory Project Manager Site Tours. This training program, initiated in 1999, gives CDER's regulatory project managers an opportunity to tour pharmaceutical facilities. The program provides regulatory project managers and their industry counterparts an opportunity to share their regulatory experiences. The program is intended to enhance review efficiency and quality by providing CDER staff with a better understanding of the pharmaceutical industry and its operation, and to improve communication and cooperation between CDER staff and industry. The purpose of this notice is to invite pharmaceutical companies interested in participating in these programs to contact CDER.

DATES: Pharmaceutical companies may submit proposed agendas by September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Sean J. Belouin, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2481, FAX 301–827–2523, e-mail: BELOUINS@cder.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this primary goal, CDER has initiated various training and development programs to promote high performance in its regulatory project management staff. CDER seeks to significantly enhance review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is continuing the Regulatory Project Manager Site Tours to give regulatory project managers the opportunity to tour pharmaceutical facilities. The goals are to provide: (1) Firsthand exposure to industry's drug development processes, and (2) a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

II. Regulatory Project Manager Site Tours and Regulatory Interactions

In this program, over a 2- to 3-day period, small groups (five or less) of regulatory project managers, including a senior level regulatory project manager, may observe operations of pharmaceutical manufacturing, packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. The purpose of this tour, or any part of the program, is meant to improve mutual understanding and to provide an avenue for open dialogue.

During the site tours, regulatory project managers and their industry counterparts will also participate in daily workshops focusing on selective regulatory issues important to both CDER staff and industry. The primary objective of the daily workshops is to learn about the team approach to drug development, including drug discovery, preclinical evaluation, project tracking mechanisms, and regulatory submission operations.

The overall benefit to regulatory project managers will be exposure to project management team techniques and processes employed by the pharmaceutical industry. By participating in this program, the regulatory project manager will grow professionally by gaining a better understanding of industry processes and procedures.

III. Site Selection

All travel expenses associated with the site tours will be the responsibility of CDER, therefore, selection of potential facilities will be based on available resources for this program.

If your firm is interested in offering a site tour or learning more about this training opportunity, please submit a proposed agenda to Sean J. Belouin (see **FOR FURTHER INFORMATION CONTACT**).

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19019 Filed 7–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Regulations and Forms (OMB No. 0915–0126)—Revision

The National Practitioner Data Bank (NPDB) was established through Title IV of Pub. L. 99–660, the Health Care Quality Improvement Act of 1986, as amended. Final regulations governing the NPDB are codified at 45 CFR part 60. Responsibility for NPDB

implementation and operation resides in the Bureau of Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services (DHHS). The NPDB began operation on September 1, 1990.

The intent of Title IV of Pub. L. 99–660 is to improve the quality of health care by encouraging hospitals, State licensing boards, professional societies, and other entities providing health care services, to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure of practitioner previous damaging or incompetent performance.

The NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, adverse licensure actions, adverse clinical privileging actions, adverse professional society actions, and Medicare/Medicaid exclusions is collected from, and disseminated to, eligible entities. It is intended that NPDB information should be considered with other relevant information in evaluating a practitioner's credentials.

This request is for a revision of reporting and querying forms previously approved on April 30, 1999. The reporting forms and the request for information forms (query forms) must be accessed, completed, and submitted to the NPDB electronically through the NPDB Web site at *http://www.npdb-hipdb.com.* All reporting and querying is performed through this secure website. Due to overlap in requirements for the Healthcare Integrity and Protection Data Bank (HIPDB), some of the NPDB's burden has been subsumed under the HIPDB.

Estimates of burden are as follows:

Regulation citation	Number of respondents	Responses per respondent	Hours per responses (in minutes)	Total burden hours
60.6(a), Errors & Omissions	400	4.625	15	462.5
60.6(b), Revisions to Actions	100	1.5	30	75
60.7(b), Medical Malpractice Payment Report	660	28.03	45	13,875
60.8(b), Adverse Action Reports—State Boards	[1] 0	0	0	0
60.9(a)3, Adverse Action Clinical Privileges & Professional Society	1,000	1.2	45	900
Requests for Hearings by Entities	1	1	480	8
60.10(a)(1), Queries by Hospital-Practitioner Applications	6,000	240,000	5	20,000
60.10(a)(2), (Queries by Hospitals-Two Yr. Cycle	6,000	960,000	5	80,000
60.11(a)(1), Disclosure to Hospitals	[2] 0	0	0	0
60.11(a)(2), Disclosure to Practitioners (Self Query)	[3] 0	0	0	0
60.11(a)(3), Disclosure to Licensure Boards	125	15,000	5	1,250
60.11(a)(4), Queries by Non-Hospital Health Care Entities	4,000	2,200,000	5	183,333
60.11(a)(5), Queries by Plaintiffs' Attorneys	5	5	30	2.5
60.11(a)(6), Queries by Non-Hospital Health Care Entities-Peer Review	[4] 0	0	0	0
60.11(a)(7), Requests by Researchers for Aggregated Data	100	100	30	50
60.14(b), Practitioner Places a Report in Disputed Status	1,000	1,000	15	250
60.14(b), Practitioner Statement	2,325	2,325	60	2,325
60.14(b), Practitioner Requests for Secretarial Review	110	110	480	880
60.3, Entity Registration-Initial	500	500	60	500
60.3, Entity Registration-Update	1,000	1,000	5	83
60.11(a), Authorized Agent Designation-Initial	500	500	15	125
60.11(a), Authorized Agent-Update	50	50	5	4.17
60.12(c), Account Discrepancy Report	300	300	5	75
60.12(c), Electronic Funds Transfer Authorization	400	400	15	100
60.3, Entity Reactivation	100	100	60	100
Total				304,398

[1] Included in estimate for reporting adverse licensure actions to the HIPDB in 45 CFR part 61.
[2] Included in estimates for 60.10(a)(1).
[3] Included in estimate for self queries to the HIPDB in 45 CFR part 61.
[4] Included in estimate for hospital queries under 60.11(a)(4).

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19059 Filed 7–25–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Call for Applications for the Director's Council of Public Representatives

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), the Federal government's primary agency for supporting and conducting medical research leading to the improvement in the nation's health, has established a national advisory council—the Director's Council of Public Representatives (COPR). The Chair of the COPR is the Director of the NIH. This notice describes the process for the selection of new members of the COPR that the NIH will use, as current members complete their terms.

DATES: The application deadline for the COPR is September 16, 2002—all applications must be postmarked on or before September 16, 2002; the notification of selection date is January 2003; the term start date is April 1, 2003; and the first COPR meeting date

for new members is April 20 and 21, 2003.

FOR FURTHER INFORMATION CONTACT: NIH Director's Council of Public Representatives (COPR), c/o Palladian Partners, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD, 20910, telephone (301) 650–8600, fax (301) 650–8676, e-mail *COPR@palladianpartners.com.* If you are interested in serving as a member of the COPR, please contact Palladian Partners, Inc., to have an application mailed to you or go on-line to *http://public-council.nih.gov/COPRapplication.asp* to access the COPR application instructions. If you have questions about your application or the submission process, please feel free to contact the staff working on this project by mail, telephone, fax, or e-mail, as indicated in the above information.

ADDRESSES: Please mail your application to NIH Director's Council of Public Representatives (COPR), c/o Palladin Partners, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD, 20910, telephone (301) 650–8660, fax (301) 650–8676, e-mail *COPR@palladianpartners.com.*

SUPPLEMENTARY INFORMATION: The Director of the NIH created the COPR in 1999 as an important forum for information exchange between the public and the NIH at the highest level. The COPR consists of up to 21 individuals who are selected from among the way diverse communities that benefit from, and have an interest in, NIH research, programs, and activities. The COPR is an important avenue for representatives of the public to advise the NIH Director on the viewpoints, input, and feedback of the broader public regarding emerging health and science priorities identified by the NIH Director and/or the COPR. COPR members also serve as NIH ambassadors by taking information from the NIH back to the broader public. COPR terms are typically three years.

The minimum eligibility criteria are that the applicant must:

- Have some interest in the work of the NIH (such as being a patient or family member of a patient; a care giver; or a volunteer in the health or science arena; a scientist or student of science; a health communicator, educator or professional in the medical field, but certainly not limited to these examples).
- Be in a position (formally or informally) to communicate regularly with the broader public or segments of the public about the activities of the COPR and the NIH.
- Commit to participating fully in activities of the COPR, including COPR meeting discussions and conference calls, outreach activities, and subcommittee and/or/working group activities that will take time in addition to COPR meeting attendance twice a year.

In addition, COPR members—while participating in COPR activities—will have to agree to subordinate disease-specific or program-specific interests to broader, crosscutting matters of importance to the NIH in addition to being responsive to special charges from the NIH Director in priority issue areas. COPR members must also agree to represent as broad a ''public viewpoint'' as possible and to at least keep the spirit of this goal at the forefront during all COPR discussions and activities.

Please contact Palladian Partners, Inc., to have an application mailed to you or go on-line to *http://public-council.nih.gov/COPRapplication.asp* to access to COPR application instructions. The NIH Director's COPR staff is located in the Office of Communications and Public Liaison, Office of the Director, National Institutes of Health. *Application packages postmarked after September 16, 2002 will be considered in the next year's application cycle, which will end in September 2003.*

After applications are screened for completeness, they will be reviewed and scored by external reviewers who are familiar with the responsibilities of the COPR. The NIH Director will make the final selection of candidates with the goal of creating a Council that reflects the breadth and diversity of the public's interest in the NIH, and will take into consideration many varied factors, including age, gender, culture, and geography. We expect that candidates will be selected in January 2003.

Thank you for your interest in the COPR. We look forward to receiving your application packet.

Dated: July 18, 2002.

John Burklow,

Acting Associate Director for Communications, NIH.

[FR Doc. 02–18943 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Loan Repayment Program for Health Disparities Research

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) and the National Center on Minority Health and Health Disparities (NCMHD) invite applications for the extramural Loan Repayment Program for Health Disparities Research (HDR–LRP or Program) for fiscal year 2002. Pursuant to the authority granted by section 103 of Public Law 106–525, the Minority Health and Health Disparities Research and Education Act of 2000, that added section 485G of the Public Health Service (PHS) Act (42 U.S.C. 287c–33), the Director of NCMHD, has established a loan repayment program that offers the repayment of educational loan debt to qualified health professionals who agree to conduct research on minority health or other health disparities for a minimum of 2 years.

DATES: Interested persons may request information about the HDR–LRP beginning on July 26, 2002, and August 23, 2002 at 5 p.m. (eastern time) is the closing date and time for the application process.

ADDRESSES: Information regarding the requirements and application procedures for the HDR–LRP may be obtained by calling or writing: National Center on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, MSC 5465, Bethesda, MD 20892–5465, Attention: Kenya McRae, non-toll-free number: (301) 402–1366, e-mail: mcraek@od.nih.gov, Web site: *http://www.ncmhd.nih.gov*; or the Office of Loan Repayment Program, National Institutes of Health, toll-free-number: (866) 849–4047, e-mail: *lrp@nih.gov,* Web site: *http://www.lrp.nih.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

(1) ''Debt threshold'' is the minimum amount of qualified educational loan debt an applicant must have in order to be eligible for Program benefits. An applicant must have qualified educational loan debt equal to at least 20% of the applicant's institutional base salary or compensation at the time of execution of the LRP contract.

(2) ''Health disparities population'' as determined by the Director of NCMHD, after consultation with the Director of the Agency for Healthcare Research and Quality, is defined as a population where there is significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population. For purposes of this announcement, the following populations are determined to be health disparities populations: Blacks/African

Americans, Hispanics/Latinos, Native Americans, Alaska Natives, Asian Americans, Native Hawaiians, Pacific Islanders and the medically underserved such as individuals from the Appalachian region.

(3) ''Health disparities research'' is defined as basic, clinical, and behavioral research on a health disparities population (including individual members and communities of such populations) including the causes of such health disparities and methods to prevent, diagnose and treat such disparities.

(4) ''Medically underserved'' refers to individuals that lack access to primary and specialty care either because they are socioeconomically disadvantaged and may or may not live in areas with high poverty rates or because they reside in rural areas. The term also refers to individuals that reside in geographic areas where the Index of Medical Underservice (IMU) is 62 or less. The Health Resource Services Administration (HRSA) criteria designates a service area with an IMU of 62 or less as a ''medically underserved area (MUA)''. The IMU is a weighted score derived from four variables: the ratio of primary medical care physicians per 1,000 population, infant mortality rate, percentage of population below the federal poverty level, and percentage of the population age 65 years or over.

(5) ''Minority health conditions'' refers to all diseases, disorders, and other conditions (including mental health and substance abuse) that are unique to, more serious, or more prevalent in racial and ethnic minorities, for which the medical risk factors or types of medical interventions may be different, or research involving such populations as subjects or data on such individuals is insufficient.

(6) ''Minority health disparities research'' is defined as basic, clinical, or behavioral research on minority health conditions, including research to prevent, diagnose, and treat such conditions.

(7) ''Qualified educational loan debt'' is defined as educational loan debt incurred by health professionals for their undergraduate, graduate and/or health professional school educational expenses incurred at accredited institutions. It consists of the principal, interest, and related expenses of qualified Government and commercial loans obtained by the applicant for: (a) Tuition expenses; (b) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (c) the cost of room and board, and other reasonable living expenses as determined by the Director of NCMHD.

(8) ''Repayable debt'' means the difference between the applicant's qualified educational loan debt and 50% of the applicant's debt threshold.

Background

The Minority Health and Health Disparities Research and Education Act of 2000 (Public Law 106–525) was enacted on November 22, 2000, amending the Public Health Service (PHS) Act and adding section 485G that authorizes the Director of the National Center on Minority Health and Health Disparities (NCMHD) to establish a program entering into contracts with qualified health professionals. These health professionals are required to conduct minority health or other health disparities research for a minimum of two years, in consideration of the Federal Government repaying a portion of the principal and interest of their educational loans, up to a maximum of $35,000 per year, for each year of service. In addition to establishing the program, the Director, NCMHD, must ensure that not fewer than 50 percent of the contracts are awarded to qualified health professionals that are members of health disparities populations. This program is known as the Loan Repayment Program for Health Disparities Research (HDR–LRP). Selected applicants become participants of the HDR–LRP only upon the execution of a contract by the Director of NCMHD.

Eligibility Requirements

Specific eligibility criteria with regard to participation in the HDR–LRP include the following:

(1) Applicants must be a United States citizen, national, or permanent resident.

(2) Applicants must have a M.D., Ph.D., Pharm.D., D.O., D.D.S., D.M.D., D.P.M., Sc.D., or equivalent doctorate degree from an accredited institution.

(3) Applicants must have qualifying outstanding educational loan debt equal to or in excess of 20 percent of their institutional base salary or compensation. (Example: An applicant with a base salary of $40,000 per year must have a minimum outstanding educational loan debt of $8,000).

(4) Applicants must not be Federal employees.

(5) Applicants must have a research sponsor or mentor with experience in the area of the proposed research and may be enrolled in a training program or appointed under a temporary or permanent employment mechanism for at least two years. (Postdoctoral fellows and physicians completing their residencies are eligible to apply provided they meet all other eligibility requirements).

(6) Applicants must agree to engage in qualified minority health or other health disparities research for the entire period of their contract.

(7) Individuals with existing service obligations to Federal, State, or other entities may not apply for the HDR–LRP, unless and until the existing service obligation is discharged or deferred for the length of Program participation.

(8) Individuals that have a Federal judgment lien against their property arising from a Federal debt from receiving Federal funds may not apply for the HDR–LRP until the judgment has been paid in full or otherwise satisfied.

(9) Individuals will not be excluded from consideration under the HDR–LRP on the basis of age, race, culture, religion, gender, sexual orientation, disability or other non-merit factors.

Application Procedures and Selection Process

Individuals should submit their completed on-line application package to the Director of the Office of Loan Repayment (OLR) who will forward it to the NCMHD, 6707 Democracy Boulevard, Suite 800, MSC 5465, Bethesda, MD 20892–5465. The NCMHD and OLR have provided the current deadlines, sources for assistance, and additional details regarding application procedures in an Applicant Information Bulletin that is located on the NIH LRP home page at *http://www.lrp.nih.gov*.

The NCMHD will forward all qualified applications to the NCMHD Loan Repayment Review Panel (Panel), chaired by the Deputy Director, NCMHD, for review. The Panel will review and rank the applications based on criteria deemed appropriate, such as the personal statement, recommendations, training plan, research statement, institutional statement and research environment.

Only applications receiving approval from the Panel and having contracts executed by the Director of NCMHD will receive funding, subject to the receipt of an appropriation and/or allocation of funds from the U.S. Congress, the NIH and/or NCMHD.

As specified by statute, the Director, NCMHD, must ensure that at least 50 percent of the awards are made to qualified health professionals who are members of health disparities populations. By placing an emphasis on the recruitment and retention of investigators from health disparities populations, it is believed that not only

do the investigators have the potential of impacting the medical processes within their communities, but also, the ability to engage in, as well as promote the development of research programs that reflect an understanding of the variety of issues and problems associated with disparities in health status. This emphasis is consistent with the statute and the goals of both the NCMHD and the NIH to develop a diversified biomedical and behavioral research workforce and to reduce health disparities. Being a member of a health disparities population, however, is not a prerequisite for participation in the HDR–LRP. Any qualified health professional may apply for the program, provided the individual is conducting minority health or other health disparities research and meets all other eligibility requirements.

Participant's Obligation

In exchange for the NCMHD repaying the participants' educational loans, participants must agree to: (1) Engage in minority health or other health disparities research for a minimum of 2 years; (2) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (3) pay monetary damages as required for breach of contract; and (4) satisfy other terms and conditions of the contract and application procedures.

Program's Obligations

Under the HDR–LRP, the NCMHD will make loan repayments to the designated lenders following the completion of each full quarter (3 months) of service by the participants and upon receipt of requested documentation from the participants and their supervisors/mentors. The total repayment amount shall not exceed $35,000 per year for each year of obligated service.

Participants will not automatically qualify for the maximum amount of loan repayment. The amount the NCMHD will consider for repayment during the initial two-year contract shall be calculated as follows: one-fourth the repayable debt per year, up to a maximum of $35,000 per year. (Example: A participant with a base salary of $40,000 per year and an outstanding eligible educational loan debt of $100,000, would have a debt threshold of $8,000 and the repayable debt would be $96,000. Of the $96,000 repayable debt amount, the NCMHD would repay $24,000 a year in loan repayments—a total of $48,000 would be repaid over the two-year contract period.) Following the conclusion of the initial two-year contract, participants may apply for renewal contracts to satisfy any remaining repayable debt. Requests for renewal contracts are considered for approval on a competitive year-to-year basis. Funding of renewal contracts is contingent upon appropriation and/or allocation of funds from the U.S. Congress, the NIH and/or NCMHD.

Payment of Loans

Because the first payment to the lenders on behalf of the participants will not commence until the end of the first full quarter of obligated service, participants should continue to make monthly loan payments until they have been informed that payments have been forwarded to their lenders. This measure enables the participants to maintain their loans in a current payment status.

The HDR–LRP will repay loans in the following order unless the Director of NCMHD, determines that significant savings would result from repaying loans in a different priority order:

(1) Loans issued or guaranteed by the U.S. Department of Health and Human Services;

(2) Loans issued or guaranteed by the U.S. Department of Education;

(3) Loans issued or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans issued or guaranteed by an Academic Institution; and

(5) Other qualifying loans.

If the participant has multiple loans in a given category, loans will be prioritized according to the interest rate (highest to the lowest).

Financial obligations that do not qualify for repayment under the HDR–LRP include:

(1) Loans not obtained from a government entity, academic institution, or commercial or other chartered lending institution (such as loans obtained from friends, relatives, or other individuals);

(2) Loans for which contemporaneous documentation is not available;

(3) Loans or portions of loans obtained for educational or living expenses which exceed a reasonable level as determined by the HDR–LRP upon review of the standard school budget or additional contemporaneous documentation for the year in which the loan was made;

(4) Delinquent loans, loans in default, loans not current in their payment schedule, loans already repaid or those for which promissory notes have been signed after the contract has been executed by the Director of NCMHD;

(5) Parent Loan for Undergraduate Students (PLUS);

(6) Loans consolidated with another individual, including a spouse;

(7) Equity loans that include educational loans as part of their balance or any other types of equity loans; and

(8) Loans, financial debts or service obligations that convert to a loan or debt for failure to satisfy the service obligation. Programs that incur service obligations include but are not limited to the following:

- Physicians Shortage Area Scholarship Programs;
- National Research Service Award Program;
- National Health Service Corps Scholarship Program;
- Armed Forces (Army, Navy or Air Force) Health Professions Scholarship Program; and
- Indian Health Service Scholarship Program.

During lapses in loan repayments, due either to administrative complications or a break in service, HDR–LRP participants are wholly responsible for making payments or other arrangements to keep loans in a current payment status and to avoid incurring any additional increase in either principal or interest. Penalties assessed participants as a result of administrative complications may be considered for reimbursement.

Additional Program Information

This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs. Under the requirements of the Paperwork Reduction Act of 1995, OMB has approved the application forms for use by the HDR–LRP under OMB Approval No. 0925–0361 (expires December 31, 2004).

The *Catalog of Federal Domestic Assistance* number for the HDR–LRP is 93.307.

Dated: July 19, 2002.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 02–18941 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Extramural Clinical Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) invites applications for the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP or Program) for fiscal year 2002. Pursuant to authority granted by Public Law 106–554, The Consolidated Appropriations Act of 2001, that amended section 487E of the Public Health Service (PHS) Act (42 U.S.C. 288–5), as added by the National Institutes of Health Revitalization Act of 1993 (Public Law 103–43), the Secretary of Health and Human Services (Secretary), acting through the Director of NIH, has established a loan repayment program that offers the repayment of educational loan debt to qualified health professionals from disadvantaged backgrounds, that have substantial debt relative to income, and agree to conduct clinical research. The Director of NIH may enter into contracts with qualified health professionals from disadvantaged backgrounds that agree to engage in clinical research for a minimum of 2 years in exchange for loan repayments toward their outstanding educational loan debt, up to a maximum of $35,000 per year.

DATES: Interested persons may request information about the ECR–LRP beginning on July 26, 2002, and August 23, 2002, at 5 p.m. (eastern time) is the closing date and time for the application process.

ADDRESSES: Information regarding the requirements and application procedures for the ECR–LRP may be obtained by calling or writing: National Center on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, MSC 5465, Bethesda, MD 20892–5465, Attention: Kenya McRae, non-toll-free number: (301) 402–1366, e-mail: *mcraek@od.nih.gov,* Web site: *http://www.ncmhd.nih.gov;* or the Office of Loan Repayment Program, National Institutes of Health, toll-free-number: (866) 849–4047, e-mail: *lrp@nih.gov,* Web site: *http://www.lrp.nih.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

(1) ''Clinical research'' is defined as patient-oriented clinical research conducted with human subjects, or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials.

(2) ''Debt threshold'' is the minimum amount of qualified educational loan debt an applicant must have in order to be eligible for Program benefits. An applicant must have qualified educational loan debt equal to at least 20% of the applicant's institutional base salary or compensation at the time of execution of the LRP contract.

(3) An ''individual from a disadvantaged background'' is defined as one who: (a) Comes from an environment that inhibited the individual from obtaining the knowledge, skill and ability required to enroll in and graduate from a health professions school; or (b) comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for the changes in the Consumer Price Index, and adjusted by the Secretary of the U.S. Department of Health and Human Services (Secretary) for use in all health professions programs. The Secretary periodically publishes these income levels in the **Federal Register**. An applicant must certify his/her disadvantaged status under the above definition by submitting: (a) A written statement from the individual's former health professions school(s) that indicates that he/she qualified for Federal disadvantaged assistance during attendance; or (b) a personal statement explaining the applicability of the above definition to his/her circumstances (such statement should indicate the city, state and county where the applicant received the majority of his/her secondary education); or (c) documentation that he/she has received any of the following financial aid: Health Professions Student Loans (HPSL); Loans for Disadvantaged Student Program; Scholarship for Individuals with Exceptional Financial Need; or other specific loans or scholarships designated for disadvantaged students. Current financial need alone is NOT sufficient to classify an individual as being from a disadvantaged background.

(4) ''Qualified educational loan debt'' is defined as educational loan debt incurred by health professionals for their undergraduate, graduate and/or health professional school educational expenses incurred at accredited institutions. It consists of the principal, interest, and related expenses of qualified Government and commercial loans obtained by the applicant for: (a) Tuition expenses; (b) other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and (c) the cost of room and board, and other reasonable living expenses as determined by the Secretary or his designee.

(5) ''Repayable debt'' means the difference between the applicant's qualified educational loan debt and 50% of the applicant's debt threshold.

Background

The Consolidated Appropriations Act of 2001 (Public Law 106–554) was enacted on December 21, 2000, amending 487E of the Public Health Service (PHS) Act to authorize the Secretary of the Department of Health and Human Services (Secretary), through the Director of the National Institutes of Health (NIH), to enter into contracts with qualified health professionals from disadvantaged backgrounds. These health professionals are required to engage in clinical research in consideration of the Federal Government repaying a portion of the principal and interest of their educational loans, up to a maximum of $35,000 per year, for each year of service. The program is known as the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP). Selected applicants become participants of the ECR–LRP only upon the execution of a contract by the Secretary or his designee.

Eligibility Requirements

Specific eligibility criteria with regard to participation in the ECR–LRP include the following:

(1) Applicants must be a United States citizen, national, or permanent resident.

(2) Applicants must have a M.D., Ph.D., Pharm.D., D.O., D.D.S., D.M.D., D.P.M., Sc.D., or equivalent doctorate degree from an accredited institution.

(3) Applicants must come from a disadvantaged background.

(4) Applicants must have qualifying outstanding educational loan debt equal to or in excess of 20 percent of their institutional base salary or compensation. (Example: An applicant with a base salary of $40,000 per year must have a minimum outstanding educational loan debt of $8,000).

(5) Applicants must not be Federal employees.

(6) Applicants must have a research sponsor or mentor with experience in the area of proposed research and may be enrolled in a training program or

appointed under a temporary or permanent employment mechanism for at least two years. (Postdoctoral fellows and physicians completing their residencies are eligible to apply provided they meet all other eligibility requirements).

(7) Applicants must agree to engage in qualified clinical research for the entire period of their contract.

(8) Individuals with existing service obligations to Federal, State, or other entities may not apply for the ECR–LRP, unless and until the existing service obligation is discharged or deferred for the length of program participation.

(9) Individuals that have a Federal judgment lien against their property arising from a Federal debt from receiving Federal funds may not apply for the ECR–LRP until the judgment has been paid in full or otherwise satisfied.

(10) Individuals will not be excluded from consideration under the ECR–LRP on the basis of age, race, culture, religion, gender, sexual orientation, disability or other non-merit factors.

Application Procedures and Selection Process

Individuals should submit their completed on-line application package to the Director of the Office of Loan Repayment (OLR) who will forward it to the NCMHD, 6707 Democracy Boulevard, Suite 800, MSC 5465, Bethesda, MD 20892–5465. The NCMHD and OLR have provided the current deadlines, sources for assistance, and additional details regarding application procedures in an Applicant Information Bulletin located at the NIH LRP home page at *http://www.lrp.nih.gov.*

The NCMHD will forward all qualified applications to the NCMHD Loan Repayment Review Panel (Panel), chaired by the Deputy Director, NCMHD, for review. The Panel will review and rank the applications based on criteria deemed appropriate, such as the personal statement, recommendations, training plan, research statement, institutional statement and research environment.

Only applications receiving approval from the Panel and having contracts executed by the Director of NCMHD will receive funding, subject to the receipt of an appropriation and/or allocation of funds from the U.S. Congress, the NIH and/or NCMHD.

Participant's Obligation

In exchange for the NCMHD repaying the participants' educational loans, participants must agree to: (1) Engage in qualified clinical research for a minimum of 2 years; (2) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (3) pay monetary damages as required for breach of contract; and (4) satisfy other terms and conditions of the contract and application procedures.

Program's Obligations

Under the ECR–LRP, the NCMHD will make loan repayments to the designated lender following the completion of each full quarter (3 months) of service by the participant and upon the receipt of requested documentation from the participants and their supervisors/mentors. The total repayment amount shall not exceed $35,000 per year for each year of obligated service.

Participants will not automatically qualify for the maximum amount of loan repayment. The amount the NCMHD will consider for repayment during the initial two-year contract shall be calculated as follows: one-fourth the repayable debt per year, up to a maximum of $35,000 per year. (*Example:* A participant with a base salary of $40,000 per year and an outstanding eligible educational loan debt of $100,000, would have a debt threshold of $8,000 and the repayable debt would be $96,000. Of the $96,000 repayable debt amount, the NCMHD would repay $24,000 a year in loan repayments—a total of $48,000 would be repaid over the two-year contract period.) At the end of the initial two-year contract, participants may apply for renewal contracts to satisfy any remaining repayable debt. Requests for renewal contracts are considered for approval on a competitive year-to-year basis. Funding of renewal contracts is contingent upon appropriation and/or allocation of funds from the U.S. Congress, the NIH and/or NCMHD.

Payment of Loans

Because the first payment to the lenders on behalf of the participants will not commence until the end of the first full quarter of obligated service, participants should continue to make monthly loan payments until they have been informed that payments have been forwarded to their lenders. This measure enables the participants to maintain their loans in a current payment status.

The ECR–LRP will repay loans in the following order unless the Secretary determines that significant savings would result from repaying loans in a different priority order:

(1) Loans issued or guaranteed by the U.S. Department of Health and Human Services;

(2) Loans issued or guaranteed by the U.S. Department of Education;

(3) Loans issued or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;

(4) Loans issued or guaranteed by an Academic Institution; and

(5) Other qualifying loans.

If the participant has multiple loans in a given category, loans will be prioritized according to the interest rate (highest to the lowest).

Financial obligations that do not qualify for repayment under the ECR–LRP include:

(1) Loans not obtained from a government entity, academic institution, or commercial or other chartered lending institution (such as loans obtained from friends, relatives, or other individuals);

(2) Loans for which contemporaneous documentation is not available;

(3) Loans or portions of loans obtained for educational or living expenses which exceed a reasonable level as determined by the ECR–LRP upon review of the standard school budget or additional contemporaneous documentation for the year in which the loan was made;

(4) Delinquent loans, loans in default, loans not current in their payment schedule, loans already repaid or those for which promissory notes have been signed after the contract has been executed by the Secretary;

(5) Parent Loan for Undergraduate Students (PLUS);

(6) Loans consolidated with another individual, including a spouse;

(7) Equity loans that include educational loans as part of their balance or any other types of equity loans; and

(8) Loans, financial debts, or service obligations that convert to a loan or debt on failure to satisfy the service obligation. Programs with service obligations include, but are not limited to the following:

- Physicians Shortage Area Scholarship Programs;
- National Research Service Award Program;
- National Health Service Corps Scholarship Program;
- Armed Forces (Army, Navy or Air Force) Health Professions Scholarship Program; and
- Indian Health Service Scholarship Program.

During lapses in loan repayments, due either to administrative complications or a break in service, ECR–LRP participants are wholly responsible for making payments or other arrangements to keep loans in a current payment status and to avoid incurring any

additional increase in either principal or interest. Penalties assessed participants as a result of administrative complications may be considered for reimbursement.

Additional Program Information

This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs. Under the requirements of the Paperwork Reduction Act of 1995, OMB has approved the application forms for use by the ECR–LRP under OMB Approval No. 0925–0361 (expires December 31, 2004).

The *Catalog of Federal Domestic Assistance* number for the ECR–LRP is 93.308.

Dated: July 19, 2002.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 02–18942 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Suppressing Unencoded MRI Signal Contribution in Multi-Phase Myocardial Tagging and Phase-Contrast Based Methods

Anthony H. Aletras (NHLBI)
DHHS Reference No. E–079–02/0
Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov.*

The invention is a method for obtaining clear functional magnetic resonance (MR) cardiac images without significantly increasing signal acquisition time. During functional magnetic resonance imaging (MRI) the specimen magnetization is spatially encoded by application of one or more radio frequency pulses (RF) and gradient magnetic fields. This spatially encoded magnetization is then read out to produce images that can be used to assess specimen motion. During this process the contrast decreases from the beginning of the cardiac cycle as the magnetization decays or relaxes, making the images more difficult to process and interpret over time. This is currently solved by acquiring the images twice (with a modified signal excitation phase) to suppress unwanted unencoded MRI signal contributions; therefore improving the contrast. Unfortunately, this prolongs the acquisition by a factor of two. In the invention, an RF inversion pulse is used to suppress the undesirable unencoded MRI signal contributions, thereby improving the contrast. This RF frequency drives the undesired signal to an equilibrium around zero, while preserving the desired encoded signal. The application of the RF inversion pulse doubles the resolution of the image and does not increase acquisition time. It allows for immediate evaluation of myocardial contractility throughout the whole cardiac cycle without requiring user intervention during phase-based data processing. There is also the possibility that this method could be used in other areas of the body, including the spinal cord, and the invention may be applicable to the study of brain motion. This new method speeds up the quantification of datasets, suppresses undesired signal contributions, and doubles the resolution of the images without doubling acquisition time.

ELISA Assay of Serum Soluble CD22 to Assess Tumor Burden/Relapse in Subjects with Leukemia and Lymphoma

Robert Kreitman et al. (NCI)
DHHS Reference No. E–065–02/0 filed May 20, 2002
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov.*

Disclosed are methods of using previously unknown soluble forms of CD22 (sCD22) present in the serum of subjects with B-cell leukemias and lymphomas to assess tumor burden in the subjects. Also disclosed are methods of diagnosing or prognosing development or progression of a B-cell lymphoma or leukemia in a subject, including detecting sCD22 in a body fluid sample taken or derived from the subject, for instance serum. In some embodiments, soluble CD22 levels are quantified. By way of example, the B-cell lymphoma or leukemia can be hairy cell leukemia, chronic lymphocytic leukemia, or non-Hodgkin's lymphoma. Soluble CD22 in some embodiments is detected by a specific binding agent, and optionally, the specific binding agent can be detectably labeled.

Also disclosed are methods of selecting a B-cell lymphoma or leukemia therapy that include detecting an increase or decrease in sCD22 levels in a subject compared to a control, and, if such increase or decrease is identified, selecting a treatment to prevent or reduce B-cell lymphoma or leukemia or to delay the onset of B-cell lymphoma or leukemia.

Other embodiments are kits for measuring a soluble CD22 level, which kits include a specific binding molecule that selectively binds to the CD22, e.g. an antibody or antibody fragment that selectively binds CD22.

Further disclosed methods are methods for screening for a compound useful in treating, reducing, or preventing B-cell lymphomas or leukemias, or development or progression of B-cell lymphomas or leukemias, which methods include determining if application of a test compound lowers soluble CD22 levels in a subject, and selecting a compound that so lowers sCD22 levels.

Mutated Anti-CD22 Antibodies with Increased Affinity to CD22-Expressing Leukemia Cells

Ira Pastan et al. (NCI)
HHS Reference No. E–129–01/0 filed Sep 26, 2001
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov.*

The present invention provides improved antibodies for binding to CD22-expressing cells (CD22 is expressed on B cells and B-cell malignancies), especially cancer cells that express CD22 on their exterior surface. In this regard, the invention provides anti-CD22 antibodies with a variable light (V_L) chain having the sequence of antibody RFB4 and a variable heavy (V_H) chain having the sequence of antibody RFB4, but in which residues 100, 100A and 100B of CDR3 of said V_H chain (as numbered by the Kabat and Wu numbering system)

have an amino acid sequence selected from the group consisting of: THW, YNW, TTW, and STY. The antibody can be a full length antibody molecule, but is preferably a single chain Fv (''scFv''), a disulfide stabilized Fv (''dsFv''), an Fab, or an F(ab').

The invention further provides compositions comprising these antibodies conjugated or fused to a therapeutic moiety or a detectable label. The therapeutic moiety can be a cytotoxin, a drug, a radioisotope, or a liposome loaded with a drug or a cytotoxin. In preferred embodiments, the effector moiety is a cytotoxin. The cytotoxin can be selected from the group consisting of ricin A, abrin, ribotoxin, ribonuclease, saporin, calicheamycin, diphtheria toxin or a cytotoxic subunit or mutant thereof, a *Pseudomonas* exotoxin, a cytotoxic portion thereof, a mutated *Pseudomonas* exotoxin, a cytotoxic portion thereof, and botulinum toxins A through F. In preferred forms, the cytotoxin is a *Pseudomonas* exotoxin or cytotoxic fragment thereof, or a mutated *Pseudomonas* exotoxin or a cytotoxic fragment thereof. In particularly preferred forms, the *Pseudomonas* exotoxin is selected from the group consisting of PE35, PE38, PE38KDEL, PE40, PE4E, and PE38QQR. In the most preferred embodiment, the *Pseudomonas* exotoxin is PE38. The compositions may further comprise a pharmaceutically acceptable carrier.

Dated: July 19, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–18944 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–Py

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Subcommittee E—Cancer Epidemiology, Prevention & Control, July 30, 2002, 4 p.m., to July 31, 2002, 5:30 p.m., 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on June 26, 2002, 67FR43132.

The meeting has been amended to change the end date from July 31, 2002 to August 1, 2002. The meeting is closed to the public.

Dated: July 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18931 Filed 7–25–02; 8:45 am]

BILLING CODE 4440–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel. Mechanisms of Fetal Hemoglobin Gene Silencing for Treatment of Sickle Cell Disease and Cooley's Anemia

Date: October 1–2, 2002.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18932 Filed 7–25–02; 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 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 552(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 person privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, NIAMS Small Grant Program for New Investigators—R03.

Date: August 6, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 1 Democracy, 6701 Democracy Blvd., Suite 707 MSC 4870, Bethesda, MD 20892–4870. (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892. (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Fellowship Awards.

Date: August 7, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 1 Democracy, 6701 Democracy Blvd., Suite 707 MSC 4870, Bethesda, MD 20892–4870. (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Disease, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, 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: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18934 Filed 7–25–02; 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 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 Mental Health Special Emphasis Panel, Ancillary Studies to NIMH Multi-Site Clinical Trials.

Date: July 30, 2002.

Time: 11 a.m. to 12:30 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: Joel Sherrill, Phd., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606. 301–443–6102. *jsherrill@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.

(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: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18935 Filed 7–25–02; 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, MBRS Special Emphasis Panel.

Date: July 30, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS–13, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Helen R Sunshine, PhD, Chief, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–13, Bethesda, MD 20892. (301) 594–2881.

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.

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18936 Filed 7–25–02; 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, Mentored Research Career Development Award (K23).

Date: August 13, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616. 301–496–2550.

(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: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18938 Filed 7–25–02; 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 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 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 Institute of Mental Health Special Emphasis Panel, Web Site Dissemination of Information about Mental Health.

Date: August 23, 2002.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513. *psherida@mail.nih.gov.*

(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: July 22, 2002.

LaVerne Y,. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18939 Filed 7–25–02; 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 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 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 Institute of Mental Health Special Emphasis Panel, Ethnic Resources for Clinical Researchers.

Date: August 16, 2002.

Time: 8 AM to 3 PM.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608. 301–443–1178. *benxu1@mail.nih.gov.*

(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: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18940 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892. (301) 435–1249.

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: Center for Scientific Review Special Emphasis Panel.

Date: August 5, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0677.

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: Center for Scientific Review Special Emphasis Panel.

Date: August 5, 2002.

Time: 4:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MISC 7848, Bethesda, MD 20892. (301) 435–0677.

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: Center for Scientific Review Special Emphasis Panel.

Date: August 6, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 12–13, 2002.

Time: 4 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892. (301) 435–1742.

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: Center for Scientific Review Special Emphasis Panel, RFA–Diabetes Retinotopathy.

Date: August 20, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Central, 1501 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892. (301) 435–1251. *bannerc@drg.nih.gov.*

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0677.

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: Center for Scientific Review Special Emphasis Panel.

Date: August 6, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892. (301) 435–1742.

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: Center for Scientific Review Special Emphasis Panel.

Date: August 8, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0677.

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, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18933 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Pathology A.

Date: July 24, 2002.

Time: 11:30 a.m.to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892. (301) 435–1214.

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, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18937 Filed 7–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4738–N–01]

Notice of Proposed Information Collection: Comment Request; Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance

AGENCY: Office of Healthy Homes and Lead Hazard Control, 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:* September 24, 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, AYO, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410; fax: 202–708–3135; e-mail *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: David Levitt, LS, Lead Technical Assistance Division, Office of Healthy Homes & Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *David_K._Levitt@hud.gov* telephone (202) 755–1785 Ext. 156; Fax: (202) 755–1000 (these are not toll-free numbers) for other available information.

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).

This Notice is soliciting comments from members of the public and affecting 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: Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance.

OMB Control Number, if applicable: 2539–0009.

Description of the need for the information and proposed use: Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 236,827, number of respondents is 1,289,006, frequency of respoonse is ''on occasion,'' and the hours per response is 0.18 hours.

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: July 19, 2002.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 02–18899 Filed 7–25–02; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–29]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Applying to HUD for Designation of State or Locally Developed Housing in the State of New York as ''Covered Units'' Eligible for Inclusion in the Federal Public Housing Program; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of The Assistant Secretary for Public and Indian Housing.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3507(j)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 2, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503; e-mail: *Lauren Wittenberg@omb.eop.gov;* fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package for Public Housing Agencies (PHAs) eligible under court orders regarding federalization language contained within section 519(n) of the Quality Housing and Work Responsibility Act (QHWRA) of 1998 to request that State and Locally Developed public housing units in the State of New York be included in the Federal public housing program and receive Federal operating and capital funds.

This Notice is soliciting comments from members of the public and affecting 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: Applying to HUD for Designation of State or Locally Developed Housing in the State of New York as ''Covered Units'' Eligible for Inclusion in the Federal Public Housing Program.

Description of Proposed Information Collection: Notice to Public Housing Agencies (PHAs) in the State of New York they may apply for designation of public housing units developed and funded in accordance with New York law as ''covered units,'' up to 7,000 of which will be eligible to receive Federal public housing operating and capital funds allocated according to statutory and regulatory formulas; provide information about all developments and units that could be ''covered units''; and communicate PHAs' preferences as to which of their developments and units they would want included in the Federal housing program. Specifically, PHAs will be asked to submit information on: (1) Name of developments; (2) Number of units; (3) Location (census tract); (4) Age and general condition; (5) Composition of units by bedroom size, and family, elderly, or disabled designation; (6) Current vacancy rate and vacancy rate for past two years; (7) If readily available, actual operating expenses for the last two fiscal years; if not readily available, any unusually large recent, current or projected operating costs (e.g. extraordinarily high utilities costs); (8) Summary of large capital improvements made over preceding five-year period; (9) Projected capital need for next five years; (10) Debt service amounts (if any); (11) Extraordinary liabilities the Federal government may need to assume (e.g. litigation); (12) Most recent Public Housing Assessment System (PHAS) rating and designation for the PHA from HUD, or copy of any recent performance assessment from applicable State or local government or other independent entity; and (13) Other information requested by HUD as necessary to complete its review. This information will be used to aid HUD in determining which units shall receive the ''covered'' designation.

OMB Control Number: Pending OMB approval.

Agency Form Numbers: None.

Members of Affected Public: State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: Of the 24 PHAs with State or Locally developed public housing units, 22 PHAs have total unit counts ranging from 50 to 300 units. The remaining 2 PHAs each have over 1,000 such units. It is anticipated the information requested shall be readily available from existing planning and reporting documents, with the possible exception of on-site capital assessments as mentioned above. The overall estimate of average hours per response includes the time to research available data sources, extract relevant data, conduct on-site property inspections, complete five-year capital improvement assessments, and compile and assemble information in the required format. An estimation of the total number of hours needed to prepare the information collection is 960, number of respondents is 24, frequency response is annually, and the hours of response is 40.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35, as amended.

Dated: July 18, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–18898 Filed 7–25–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–30]

Notice of Submission of Proposed Information Collection to OMB; Contract for Development of Architect and Engineer Services

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:* August 26, 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 (2577–0015) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, 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: Contract for Development of Architect and Engineer Services.

OMB Approval Number: 2577–0015.

Form Numbers: HUD–51915, HUD–51915A.

Description of the Need for the Information and its Proposed Use: Federal Law or regulation requires a contractual agreement between public housing agencies, owners, and an architect/engineer for design and construction services.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,630	1		2.25		5,917

Total Estimated Burden Hours: 5,917.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 19, 2002.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–18959 Filed 7–25–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–30]

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: July 26, 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: July 18, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–18601 Filed 7–25–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary for Water and Science, Interior.

ACTION: Notice of intent to negotiate a contract between the Central Utah Water Conservancy District and Department of the Interior for prepayment of costs allocated to municipal and industrial

water from the Bonneville Unit of the Central Utah Project, Utah County, Utah.

SUMMARY: Public Law 102–575, Central Utah Project Completion Act, Section 210, as amended through Public Law 104–286, stipulates that: ''The Secretary shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under terms and conditions similar to those contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The prepayment may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid and may not be adjusted on the basis of the type of prepayment financing utilized by the District.'' In accordance with the above referenced legislation, the Central Utah Water Conservancy District (CUWCD) intends to prepay the costs obligated under repayment contract No. 14–06–400–4286, as supplemented. This contract will provide for the fourth installment in a series of prepayments. The terms of the prepayment are to be publicly negotiated between CUWCD and the Department of the Interior.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this Federal Register Notice can be obtained by contacting Mr. Wayne Pullan, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, Utah 84606–6154, (801) 379–1194, *wpullan@uc.usbr.gov.*

Dated: June 18, 2002.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 02–18912 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Hualapai Tribe of Arizona Liquor Code Amendment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Hualapai Tribe of Arizona Liquor Code Amendment as set forth by Resolution No. 08–2002. The Liquor Code of the Hualapai Tribe was originally published in the **Federal Register** of March 14, 1969. This amendment extends tribal regulation of liquor sales to commercial helicopter tours on the Hualapai Reservation in conjunction with tourism and is in conformity with the laws of the State of Arizona, where applicable and necessary. Although the Code Amendment was adopted on February 15, 2002, it does not become effective until published in the **Federal Register**, because the failure to comply with the Code may result in criminal charges.

DATES: The Code Amendment is effective on July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Hualapai Reservation Liquor Code Amendment, Resolution No. 08–2002, was duly adopted by the Tribal Council of the Hualapai Tribe on February 15, 2002. The Hualapai Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Hualapai Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution 08–2002, the Hualapai Tribe of Arizona Liquor Code Amendment duly adopted by the Hualapai Tribal Council on February 15, 2002.

Dated: July 12, 2002.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

The Hualapai Tribe of Arizona Liquor Code Amendment, Resolution No. 08–2002, reads as follows:

Hualapai Tribal Code

Commercial Champagne Flights Ordinance

Sec. 1—Commercial Champagne Flight.

(a) *General Provisions.*

(1) *Title.* This section shall be known as the Hualapai Tribe Commercial Champagne Flight Ordinance.

(2) *Authority.* This section is enacted pursuant to the Act of August 15, 1953 (Public Law 83–277, 67 Stat. 588, 18 U.S.C. 1161), as interpreted by the United States Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), and Article V of the Hualapai Tribe Constitution.

(3) *Purpose.* The purpose of this section is to allow for, regulate, and control the limited possession, transportation, sale, and consumption of champagne or similar sparkling wine beverages in conjunction with commercial helicopter tours on the Hualapai Reservation. Enactment of this section will increase the ability of the Community government to regulate Reservation alcohol possession and consumption, and at the same time provide an important source of revenue for the continued operation and strengthening of the Community and the delivery of Community government services.

(4) *Scope and Territory.* This section applies to all sales, purchases, distributions, possession, and consumption of alcoholic beverages made in conjunction with any tribally authorized commercial helicopter tour conducted within the exterior boundaries of the Hualapai reservation.

(5) *Application of 18 U.S.C. Section 1161.* All acts and transactions under this section shall be in conformity with this section and in conformity with the laws of the State of Arizona, as that term is used in Title 18 of the United States Code, Section 1161.

(6) *Effective date.* This section shall take effect on the date it is approved by the Secretary of the Interior or the Secretary's designate.

(b) *Definitions.*

In this section, unless the context otherwise requires, the meaning of terms used have the following meaning:

Alcohol and Alcoholic Beverage. Beer, wine or any other spirituous liquor.

Champagne and Similar Sparkling Wine Beverage. Any alcoholic sparkling wine beverage with an alcohol content not to exceed fourteen percent (14%).

Community. The Hualapai Tribe.

Customer. One who patronizes a commercial champagne tour.

Person. A natural person or a corporation duly chartered by a jurisdiction within the United States.

Reservation. All Indian lands under the control and authority of the Hualapai Tribe.

Sell, Sold, Buy. Furnish, dispose of, give, receive or acquire.

Tribal Official. A tribal police officer, an officer or Director of the Grand Canyon Resort Corporation, or a member of the Tribal Council.

Tribe or Hualapai Tribe. The Hualapai Indian Tribe of the Hualapai Indian Reservation, a federally recognized Indian tribe. Unless specifically provided for in subsection (e) below, this section does not invalidate or alter the limitations on the use, sale, purchase, possession, or consumption of alcohol set forth in Sections 6.21(A), 6.34, 6.34(A), 6.58 or elsewhere in the Hualapai Tribal Code.

(c) *Unlawful Acts.* Unless specifically provided for in subsection (e) below, this section does not invalidate or alter the limitations on the use, sale, purchase, possession, or consumption of alcohol set forth in Sections 6.21(A), 6.34, 6.34(A), 6.58 or elsewhere in the Hualapai Tribal Code.

(d) *Limited Use of Alcohol for Commercial Champagne Helicopter Tours.* Notwithstanding limitations on the use, sale, purchase, possession, or consumption of alcohol set forth elsewhere in the Hualapai Tribal Code, the limited use of alcohol for commercial champagne helicopters is allowed, consistent with the following provisions:

(1) A helicopter vendor may transport up to two bottles, not to exceed 36 ounces each, of champagne or similar sparkling wine beverages for purposes of providing or selling such beverages to customers in conjunction with tribally authorized commercial champagne helicopter tours. All other alcoholic beverages are specifically excluded from the helicopter champagne tour and are otherwise banned from the application of this section. Passengers on commercial champagne helicopter tours may consume such beverages outside of the helicopter and within the regular sightseeing areas located near the vendor's helipad landing sites at the base of the Grand Canyon.

(2) A helicopter operator, vendor employee, or vendor contractor who becomes aware of an individual violation of this section must instruct the violator to immediately desist from his or her unauthorized use of alcohol. Such a helicopter operator, vendor employee, or vendor contractor shall immediately, or as soon thereafter as is practicable, notify a Tribal Official of the violation and shall provide the name, address and other identifying information of the violator. Failure of a helicopter operator, vendor employee, or vendor contractor to perform the requirements of this subsection is a violation of this section.

(3) At no time may a helicopter vendor provide, nor may customers consume more than one bottle of champagne or similar sparkling wine per couple.

(4) At no time may a helicopter operator, vendor employee, or vendor contractor consume any alcoholic beverages during such periods such person is or persons are working in conjunction with a commercial champagne helicopter tour.

(5) The transportation and consumption of alcohol pursuant to this section must at all times be consistent with all Federal Aviation Administration requirements.

(e) *Removal of Alcoholic Beverages.* All alcoholic beverages and containers must be removed from the Hualapai Reservation by the helicopter operator, vendor employee or vendor contractor on the same helicopter champagne tour which introduced said beverages onto the Reservation.

(f) *Violation of Section.*

(1) A customer who violates any provision of this section shall be subject to a civil fine not to exceed $1,000.00, plus court costs.

(2) A helicopter vendor, vendor employee, or contractor who violates any provision of this section shall be subject to a civil fine not to exceed $5,000.00, plus court costs, and such violation shall be reported to the Grand Canyon Resort Corporation (GCRC) for its consideration of revoking the vendor's operating certificate.

(3) Violations of this Section shall be cited into the Tribal Court, and the rules of the Tribal Court shall control such actions.

(g) *Agreement to Consent of Civil Jurisdiction Required.* Any customer, helicopter vendor, vendor employee, or vendor contractor who seeks to transport or consume champagne or similar sparkling wine beverages pursuant to this section shall, before transporting or consuming such beverages, enter into a written agreement explicitly consenting to Hualapai Tribe civil jurisdiction over all matters arising from the applicants' activities within the exterior boundaries of the Tribe's reservation.

(h) *Saving and Severability.* In the event any section or provision of this section or its application to any particular activity is held to be invalid, the remaining sections and provisions of this section and the remaining applications of such sections and provisions shall continue in full force and effect.

(i) *No Waiver of Sovereign Immunity.* Nothing in this section shall serve to waive the Hualapai Tribe's sovereign immunity, which is hereby expressly affirmed.

(j) *Amendments.* This section may be amended by official action of the Tribal Council.

(k) *Repeal of Prior Laws.* This section, upon becoming effective, shall operate to revise any inconsistent portion of the Hualapai Tribal Code.

[FR Doc. 02–18884 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1320–PB–24]

Extension of Approved Information Collection, OMB Approval Number 1004–0073

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from any person, association, corporation, subsidiary, or affiliate interested in leasing or developing Federal coal. The BLM uses the information to determine if the applicant is qualified to hold a Federal coal lease.

DATES: You must submit your comments to BLM at the address below on or before September 24, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0073'' and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact William Radden Lesage, Solid Minerals Group, on (202) 452–

0360 (Commercial or FTS). Person who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Lesage.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimate of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM manages the leasing and development of Federal coal under the regulations at 43 CFR Group 3400. These regulations implement numerous statutes including:

(1) The Mineral Leasing Act of 1920;

(2) The 1976 coal amendments (30 U.S.C. 181 *et seq.*);

(3) The Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359);

(4) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*);

(5) The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*);

(6) The Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531);

(7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); and

(8) The Act of October 30, 1978 (92 Stat. 2073–2075).

BLM uses the information provided by the applicant(s) on BLM Forms 3400–12 and 3440–1 to determine if the applicant to lease or develop Federal coal is qualified to hold such a lease.

Based on BLM's experience administering the activities described below, we estimate the public reporting burden for the information collected is 20 hours and 15 minutes per response and the total annual burden is 23,896 hours. We estimate the number of responses per year is 1,185. The respondents are applicants to lease or develop Federal coal and vary from individuals to small businesses and major corporations. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

Type of application	43 CFR	Hrs. per response	Number of reps.	Total hrs.
Application for an exploration license	3410.2–1	36	10	360
Issuance and termination of an exploration license	3410.3–1	12	5	60
Operation under and modification of an exploration license	3410.3–3	1	1	1
Collection and submission of data from an exploration license	3410.4	18	5	90
Call for coal resource and other resource info.	3420.1–2	3	0	0
Surface owner consultation	3420.1–4	1	7	7
Expressions of leasing interest	3420.3–2	7	0	0
Response to notice of sale	3422.2	56	8	448
Consultation with Attorney General	3422.3–4	4	7	28
Leasing on application	3425	308	15	4,620
Surface owner consent	3427.2(c)	1	7	7
Preference right lease application	3430.3–1, 3430.4–1	800	3	2,400
Lease modifications	3432.1	12	5	60
License to mine	3440	21	2	42
Relinquishments	3452.1–1, 3452.1–2	18	30	540
Transfers, assignments, subleases	3453.2–1	10	43	430
Bonds	3410.3–4, 3453.2–4, 3474.1, 3474.2.	8	196	1,568
Land description requirements	3471.1–1	2	15	30
Future interest lease application	3471.4	16	0	0
Special leasing qualifications	3472.1–2	3	4	12
Qualification statement	3472.2	3	4	12
Lease rental and royalty rate reductions	3473.3–4	13	9	117
Lease suspensions	3473.4, 3483.3	20	7	140
Lease form	3475.1	1	12	12
Logical mining units	3475.6, 3481.2, 3487	170	5	850
General obligations of the operator/lessee	3481.1	1	1	1
Exploration plans	3482.1(a)	30	11	330
Resource recovery and protection plan	3482.1(b)	192	4	768
Modifications to exploration plans and resource recovery and protection plans.	3482.2	16	79	1,264
Mining operations maps	3482.3	20	311	6,220
Request for payment of advance royalty in lieu of continued operation.	3483.4	22	12	264
Performance standards for exploration (Retention of samples)	3484.1(a)	1	22	22
Performance standards for surface and underground coal mines.	3484.1(b)	1	6	6
Exploration reports	3485.1(a), 3485.1(b), 3485.1(c).	4	7	28
Production reports	3485.1(d), 3485.3	10	323	3,230
Notices and orders	3486.2	3	1	3

Type of application	43 CFR	Hrs. per response	Number of reps.	Total hrs.
Enforcement	3486.3	2	8	16
Total			1,185	23,986

Any member of the public may request and obtain, without charge, a copy of the BLM Forms 3400–12 and 3400–1 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 11, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–18887 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–960–1410–PB–24–1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0191

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from Alaska Native Vietnam Era Veterans interested in applying for a 160-acre allotment of Federal lands in Alaska. BLM uses Form AK 2561–10 to collect the requested information to determine if they qualify and are eligible to obtain a 160-acre allotment of Federal land in Alaska.

DATES: You must submit your comments to BLM at the address below on or before September 24, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''Attn: 1004–0191'' and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Dennis Benson, Alaska State Office, on (907) 271–3248 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Benson.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Under Section 432 of the Veterans Administration and Housing and Urban Development Appropriations Act (Public Law 105–276), the Alaska Native Claims Settlement Act was amended to include a new section which allows certain Alaska Native Vietnam Era Veterans to apply for native allotments. The implementing regulations are 43 CFR 2568—Alaska Native Allotments for Certain Veterans.

Based on BLM's experience administering this program, we estimate the public reporting burden to complete Form AK 2561–10 is 30 minutes and 27 hours and 30 minutes to gather and complete the required information such as marking the corners of the lands applied for, and requesting/completing a cadastral survey of the lands. BLM estimates that we receive 732 applications annually, with a total annual burden of 20,496 hours. The respondents are Alaskan Native Vietnam Era Veterans. The frequency of response is once for each applicant.

Any member of the public may request and obtain, without charge, a copy of BLM Form AK 2561–10 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 16, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–18888 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–04–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0025

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collection information from all owners of unpatented mining claims or mill sites who desire to apply for a mineral patent to their mining claim or mill site. The BLM uses the information to determine the right to a mineral patent and to secure a settlement of all disputes concerning the property in order to issue the patent to the rightful owner.

DATES: You must submit your comments to BLM at the address below on or

before September 24, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include ''ATTN: 1004–0025'' and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Roger A. Haskins, Solid Minerals Group, on (202) 452–0355 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Haskins.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use:

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Under the General Mining Law (30 U.S.C. 29, 30, and 39), we grant the opportunity to obtain legal title (patent) to the land of those who explore for and locate valuable mineral deposits on the public domain lands. BLM implements the patent process under regulations 43 CFR 3860. Under 43 CFR 3870, any rival claimant with overlapping claims to the land applied for or anyone challenging BLM to issue the patent based on failure to follow the law or regulations must file with BLM certain required statements and evidence supporting the challenge or we will statutorily dismiss the challenge. The implementing regulations require a patent applicant to provide the following information:

(1) Mineral survey application. Under 43 CFR Subpart 3861, the holder of a claim must submit to BLM a mineral survey for all lode claims, most mill sites, and placer claims located upon surveyed public lands, as a requisite to apply for a patent. BLM uses Form 3860–5 to collect the mining claim or site recording, chain-of-title, and geographic location information so that we can authorize a Deputy U.S. Mineral Surveyor to survey the claims or sites.

(2) Mineral patent application. Under 43 CFR 3862, 3863, and 3864, a mineral patent applicant must file certain proofs of ownership to demonstrate clear title to the claim(s) or millsite(s), bonafide of development, and the existence of a commercial mineral deposit subject to the General Mining Law of 1872, as amended. BLM used Form 3860–2 for title verification until Congress implemented a moratorium on new mineral patent applications.

Based on BLM's experience administering the General Mining Law, we estimate the public reporting burden to complete Form 3860–5 is one hour and for adverse claims or protests it is two hours. BLM estimates that we receive 30 mineral survey applications and 10 protests annually, with a total annual burden of 50 hours. The respondents are owners of unpatented mining claims and mill sites upon the public lands, reserved mineral lands of the United States, National Forests, and National Parks. The frequency of response is once for each mineral survey, each application for patent, and each filing of a protest or adverse claim. Since October 1, 1994, Congress has passed an annual moratorium which prevents the BLM for processing mineral patent applications unless the applications were grandfathered under the initial legislation. This moratorium does not affect mineral surveys, contests, or protests to existing mineral patent applications.

Any member of the public may request and obtain, without charge, a copy of BLM Form 3860–5 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: July 9, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–18889 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA–32028]

Arizona; Proposed Classification of Public Lands for State Indemnity Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Classification of Public Lands for State Indemnity Selection.

SUMMARY: The Arizona State Board of Land Commissioners has filed a petition for classification and application to acquire the public lands, including the mineral estate, as applicable, described in paragraph 5 below, under the provisions of sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), in lieu of certain school lands granted to the State under the enabling act of June 20, 1910 (36 Stat. 557, 572–575), that were encumbered by other rights or reservations before the State's title could attach. This application has been assigned Serial Number AZA–32028.

SUPPLEMENTARY INFORMATION:

1. The Bureau of Land Management will examine these lands for evidence of prior valid rights or other statutory constraints that would bar transfer. This proposed classification is pursuant to Title 43, Code of Federal Regulations, subpart 2400; and section 7 of the Act of June 28, 1934. (48 Stat. 1269).

2. Information concerning these lands and the proposed transfer to the State of Arizona may be obtained from the Bureau of Land Management, Arizona State Office.

3. For a period of 60 days from the date of publication of this notice in the **Federal Register**, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the State Director, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004.

Any adverse comments will be evaluated by the State Director who will issue a notice of determination to proceed with, modify, or cancel the action. In the absence of any action by the State Director, this classification action will become the final determination of the Department of the Interior.

As provided by Title 43 Code of Federal Regulations, Subpart 2462.1(b), a public hearing may be scheduled by the State Director if he determines that sufficient public interest exists to

warrant the time and expense of a hearing.

4. The lands/minerals included in the proposed classification are as follows:

Group I—For Oil and Gas Only:

Gila and Salt River Meridian, Arizona

T. 9 N., R. 30 E.
Sec. 13, SW¼SW¼;
Sec. 24, NE¼.
T. 9 N., R. 31 E.
Sec. 3, Lots 1–3, inclusive, Lots 5–7, inclusive, SW¼NE¼, SE¼NW¼;
Sec. 10, Lots 1–4, inclusive, W½E½, E½W½;
Sec. 15, Lots 1–4, inclusive, W½NE¼;
Sec. 22, Lots 3 and 4, SW¼SE¼, SE¼SW¼;
Sec. 27, Lots 1–3, inclusive, W½NE¼, NE¼NW¼, NW¼SE¼.
T. 10 N., R. 30 E.
Sec. 25, All.

The areas described aggregate approximately 1,852.98 acres, more or less.

Group II—For All Minerals, including Oil and Gas:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 30 E.
Sec. 11, SE¼, SE¼SW¼;
Sec. 14, All;
Sec. 23, All;
Sec. 33, W½NE¼, W½, NW¼SE¼, S½SE¼.
T. 11 N., R. 29 E.
Sec. 21, E½SE¼;
Sec. 22, NW¼SW¼;
Sec. 23, NW¼SW¼.
T. 11 N., R. 31 E.
Sec. 30, Lots 1–4, inclusive, E½, E½W½.
T. 12 N., R. 29 E.
Sec. 24, All.
T. 12 N., R. 30 E.
Sec. 19, Lots 2–4, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 20, S½N½, S½;
Sec. 24, All;
Sec. 25, All;
Sec. 27, W½, SE¼.
T. 12 N., R. 31 E.
Sec. 18, Lots 1–4, inclusive, E½, E½W½;
Sec. 19, Lots 1–4, inclusive, E½, E½W½;
Sec. 20, All;
Sec. 29, All;
Sec. 30, Lots 1–4, inclusive, E½, E½W½;
Sec. 31, Lots 1–4, inclusive, E½, E½W½.

The areas described aggregate approximately 9,963.62 acres, more or less.

Group III—For All Surface and Subsurface (including Oil and Gas):

Gila and Salt River Meridian, Arizona

T. 12 N., R. 29 E.
Sec. 32, E½E½.
T. 12 N., R. 30 E.
Sec. 8, S½S½;
Sec. 21, All;
Sec. 28, All;
Sec. 29, All;
Sec. 34, All;
Sec. 35, NW¼, S½.

The areas described aggregate approximately 3,360.00 acres, more or less.

Group IV—For Surface Only:

Gila and Salt River Meridian, Arizona

T. 12 N., R. 28 E.
Sec. 14, E½NE¼, NW¼NE¼, W½NW¼, NW¼SW¼, W½SE¼, SE¼SE¼.
T. 12 N., R. 29 E.
Sec. 12, N½NE¼, SW¼NE¼, W½NW¼;
Sec. 18, Lots 2–4, inclusive, SW¼NE¼, E½SW¼, SE¼;
Sec. 20, SE¼SE¼;
Sec. 21, NE¼, N½NW¼, SE¼NW¼, S½;
Sec. 27, All;
Sec. 28, All.
T. 12 N., R. 30 E.
Sec. 1, Lots 1–16, inclusive, SW¼;
Sec. 3, Lots 1–12, inclusive;
Sec. 4, Lots 1–12, inclusive;
Sec. 5, Lots 1 & 2, Lots 5–8, inclusive;
Sec. 9, E½;
Sec. 10, All;
Sec. 11, Lots 1–16, inclusive;
Sec. 12, NW¼;
Sec. 13, S½;
Sec. 14, NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, E½SE¼;
Sec. 17, N½N½;
Sec. 23, E½NE¼, SW¼NE¼, NW¼NW¼, S½SW¼, SE¼;
Sec. 26, NE¼, N½NW¼, S½SW¼.
T. 12 N., R. 31 E.
Sec. 21, All;
Sec. 22, Lots 1–4, inclusive, W½E½, W½;
Sec. 27, Lots 1–4, inclusive, W½E½, W½;
Sec. 28, All;
Sec. 33, All;
Sec. 34, Lots 1–4, inclusive, W½E½, W½.

The areas described aggregate approximately 11,870.55 acres, more or less.

Group V—For Surface and/or Subsurface (Minerals and/or Oil and Gas)

Gila and Salt River Meridian, Arizona

T. 10 N., R. 29 E.
Sec. 18, E½.
T. 11 N., R. 28 E.
Sec. 14, E½E½, NW¼NE¼, SW¼SE¼.
T. 12 N., R. 28 E.
Sec. 10, NW¼SE¼;
Sec. 12, NW¼NE¼, NE¼NW¼, W½SW¼.
T. 12 N., R. 31 E.
Sec. 15, Lots 1–4, inclusive, W½E½, W½.

The areas described aggregate approximately 1,305.82 acres, more or less.

The following listed corporations and individuals are holders of valid leases, permits, and/or rights-of-way on the public lands described above:

Oil and Gas Lease Holders

Gary L. Kiehne, Box 3855, Midland, Texas 79702, AZA–30203, AZA–30206, AZA–30208, AZA–30210, AZA–30211, AZA–30212, AZA–30214, AZA–30216, AZA–30218, AZA–30220, AZA–30221
Ridgeway AZ Oil Corporation, Box 1110, St. Johns, Arizona 85936, AZA–28337, AZA–30213, AZA–30215, AZA–30217, AZA–30224, AZA–30225, AZA–30226, AZA–30227, AZA–30228
Menard Energy Corporation, 5701 Woodway, #350, Houston, Texas 77057, AZA–30202

Recreation and Public Purpose

Arizona State Parks, 800 West Washington, Phoenix, Arizona 85007, AZA–18072

Special Recreation Permittes

National Outdoor Leadership School, Peter Miers, 2751 N. Soldier Trail, Tucson, Arizona 85749, AZA–28264
Handrich Guides and Outfitters, Dave Handrich, P.O. Box 276, Glenwood, New Mexico 88039, NM–038–8–01
Newell Dryden, P.O. Box 543, Thatcher, Arizona 85552, AZA–28308
Gila Buggy Adventures, Earl Morcomb, P.O. Box 1035 Safford, Arizona 85546, AZA–31065
Phantom Ridge Outfitters, Daniel Ward, P.O. Box 575, Thatcher, Arizona 85552, AZA–30643
Robert Corbell, P.O. Box 760, Morenci, Arizona 85540, AZA–31085

Grazing Lease Holders

Royden & Jack Brown, 4343 E. Keim Drive, Paradise Valley, Arizona 85253, Allotment Number 06033
Clifford A. Thorn, P.O. Box 1091, St. Johns, Arizona 85936, Allotment Number 06061
Johnson Cattle Company, 1132 W. McLellen Road, Mesa, Arizona 85201, Allotment Number 06069
JCK, LLC, 1601 E. McKellips Road, Mesa, Arizona 85203, Allotment Number 06158
James Datrice, 17120 Iron Mountain Drive, Poway, California 92064, Allotment Number 06159
Dale G. & Pamela J. Deratany, HC 62, Box 235, Reserve, New Mexico 87830, Allotment Number 06224
Barbara Garcia, 5796 Hollyridge Drive, Camarillo, California 93010, Allotment Number 06253

Range Improvement Holders

Royden & Jack Brown, 4343 E. Keim Drive, Paradise Valley, Arizona 85253, Project Number 1039
Clifford A. Thorn, PO Box 1091, St. Johns, Arizona 85936, Project Number 0981, 0988
JCK, LLC, 1601 E. McKellips Road, Mesa, Arizona 85203, Project Number 2398
James Datrice, 17120 Iron Mountain Drive, Poway, California 92064, Project Number 2322, 2402

Right-of-Way Holders

Navopache Electric Corporation, Box 308, Lakeside, Arizona 85929, AZAR–017703, AZA–023995, AZA–006016
AT & T, 1200 Peach Tree, PA168, Atlanta, Georgia 30309, AZAR–033064, AZA–023608
Apache County Board of Supervisors, Box 238, Lakeside, Arizona 85936, AZA–018952
Lyman Water Company, Box 235, St. Johns, Arizona 85936, AZA–014912, AZPHX–086671

5. Rights-of-way granted by the Bureau of Land Management on the above lands will transfer with the land or may be reserved to the United States (see Sec. 508 of Federal Land Policy Management Act). Oil and gas leases (geothermal, other leasing act minerals)

will remain in effect under the terms and conditions of the lease. (Upon expiration or termination of the leases, or any authorized extensions thereof, such rights shall automatically vest in the State.)

Upon receipt of title to the federal lands under application, the Arizona State Land Department is prepared to offer the existing federal grazing lessee(s) an opportunity to apply for a State grazing lease. The State will honor the currently established livestock carrying capacity for the term of the federal lease. In addition, the State shall recognize the federal lessee's interest in federally approved improvements. This classification notice constitutes official notice to holders of grazing use authorizations from the Bureau of Land Management that such authorizations will be terminated in part upon transfer of the land described above to the State of Arizona.

For a period of 45 days from the date of publication, persons asserting a claim to or interest in the described lands, other than holders of leases, permits, or rights-of-way listed above, may file such claim with the State Director, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004, with evidence that a copy thereof has been served on the Board of Land Commissioners, State of Arizona, 1616 West Adams, Phoenix, AZ 85007.

Dated: June 19, 2002.

Joanie Losacco,

Associate State Director.

[FR Doc. 02–18955 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–02–0777XX–241A]

Call for Nomination for Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior

ACTION: Notice of vacancy on Resource Advisory Council and call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for the Bureau of Land Management's (BLM's) Mojave Southern Great Basin Resource Advisory Council (RAC) to fill a vacancy on the RAC for an individual employed by the State of Nevada. The RAC provides advice and recommendations to BLM's Las Vegas and Ely field offices on land use planning and management of the public lands within their geographic areas. Public nominations will be received for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, the interests represented by the individuals appointed to the RAC must be balanced and representative of the various issues concerned with the management of public lands.

These include three categories, one of which is category three, holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

The State employee whose term has not yet expired has left state government, and this notice is to solicit nominations for replacements. Nominations should be sent to Jo Simpson, BLM Nevada State Office, 1340 Financial Boulevard, P.O. Box 12000, Reno, Nevada, 89520–0006; telephone (775) 861–6586.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, U.S. Department of the Interior, Bureau of Land Management, Communications, P.O. Box 12000, Reno, Nevada, 89520–0006.

Dated: October 25, 2001.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02–18890 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA–668–1826 (P)]

Santa Rosa and San Jacinto Mountains National Monument Advisory Committee: Notice of Call for Nominations

AGENCIES: Bureau of Land Management, Interior; Forest Service, Agriculture.

ACTION: Notice of call for nominations for the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee under the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, Public Law 106–351 (16 USC 431 note).

The appointments are for a duration of 3 years and apply to five membership slots that expire November 2002.

SUMMARY: The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Act) required that the Secretaries of the Interior and Agriculture establish a National Monument Advisory Committee (Committee) to advise them on resource management issues associated with the Santa Rosa and San Jacinto Mountains National Monument, specifically providing guidance on the National Monument Plan. This notice requests the public to submit nominations for five memberships on the Committee. The Committee is managed under the provisions of the Federal Advisory Committee Act.

The call for nominations is for representatives for the County of Riverside, the cities of Indian Wells and Cathedral City, the Coachella Valley Mountains Conservancy, and the Winter Park Authority.

DATES: Submit nominations to one of the addresses listed below no later than 30 days after publication in the **Federal Register**.

ADDRESSES: Send nominations to: Advisory Committee Nominations, Ms. Danella George, Bureau of Land Management, P.O. Box 581260, North Palm Springs, California, 92258–1260 (760) 251–4804.

FOR FURTHER INFORMATION CONTACT: Ms. Danella George, Santa Rosa and San Jacinto Mountains National Monument, (760) 251–4804.

SUPPLEMENTARY INFORMATION: As directed by the Act, the Secretary of the Interior and the Secretary of Agriculture jointly established an advisory committee for the Santa Rosa and San Jacinto Mountains National Monument (Monument). The Committee's purpose is to advise the Secretaries with respect to the preparation and implementation of a management plan for the Monument. The Committee meets every other month on a Saturday. The purpose of the Committee is to gather and analyze information, conduct studies and field examinations, hear public testimony, ascertain facts, and, in an advisory capacity only, develop recommendations concerning planning for the management and uses of the National Monument. The designated

Federal officer, or his or her designee, in connection with special needs for advice, may call additional meetings. A Committee Chairperson and Vice Chairperson will be elected by the Committee from among its' members annually.

Any individual or organization may nominate one or more persons to serve on the Committee. Individuals may nominate themselves for Committee membership. You may obtain nomination forms from the BLM or Forest Service by contacting the individuals listed in **ADDRESSES** above. To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organization, and any other information that speaks to the nominee's qualification, to the offices listed above. You may make nominations for the following categories of interest, as specified in the Act: (1) A representative of the Country of Riverside, California; (2) a representative from each of the following cities: Cathedral City and Indian Wells; (3) a representative of the Coachella Valley Mountains Conservancy; (4) a representative of the Winter Park Authority. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Advisory Committee.

Committee members will be appointed to serve 3-year terms. All members will serve without pay but will be reimbursed for travel and per diem expense at the current rates for government employees under 5 U.S.C. 5703.

The Secretary of the Interior will make appointments to the Committee with the concurrence of the Secretary of Agriculture.

Dated: July 8, 2002.

Danella George,

Monument Manager, Santa Rosa and San Jacinto Mountains, National Monument, Bureau of Land Management.

Dated: July 3, 2002.

Laurie Rosenthal,

District Ranger, Idyllwild Ranger District, San Bernardino National Forest.

[FR Doc. 02–18957 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–EX]

Final Environmental Impact Statement; Leeville Project, Eureka Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Elko Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Final Environmental Impact Statement on Newmont Mining Corporation's Leeville Project, located in Eureka County, Nevada.

EFFECTIVE DATES: The Final Environmental Impact Statement will be distributed and made available to the public on July 26, 2002. The period of availability for public review for the Final Environmental Impact Statement ends August 26, 2002. At that time a Record of Decision will be issued regarding the Proposed Action.

ADDRESSES: A copy of the Final Environmental Impact Statement can be obtained from: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801. The Final Environmental Impact Statement may also be downloaded from the Elko Field Office Internet site at *http://www.nv.blm.gov/elko.*

FOR FURTHER INFORMATION CONTACT: Deborah McFarlane, Project Manager, at the above Elko Field Office address or telephone (775) 753–0200.

SUPPLEMENTARY INFORMATION: Proposed action is to develop and operate an underground mine and ancillary facilities, including dewatering. An abbreviated Final Environmental Impact Statement has been produced. The abbreviated Final Environmental Impact Statement contains copies of substantive comments received on the draft EIS, responses to those comments, and an errata section with specific modifications and corrections to the draft in response to the comments. Alternatives analyzed include the Proposed Action, No Action, (A) Eliminate Canal Portion of Water Discharge Pipeline System, (B) Backfill Shafts, and (C) Relocation of the Waste Rock Disposal Facility and Refractory Ore Stockpile. The Bureau of Land Management's preferred alternative is to implement A, B, and C.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02–18186 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–EX]

Record of Decision; South Operations Area Project Amendment, Eureka Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: This notice announces the signing of the Record of Decision on the proposed South Operations Area Project Amendment. The decision to approve the mining operation will be in full force and effect, when the Field Office Manager signs the Record of Decision

EFFECTIVE DATES: The decision to approve the mining operation will be in full force and effect, on July 26, 2002 when the Field Office Manager signs the Record of Decision. A petition for a stay of the decision must be filed in accordance with 43 CFR 4.411 and 4.413. If you believe you are adversely affected by the Record of Decision you have 30 days, from the date of publication of this notice, to file a Notice of Appeal in the Elko Field Office (See 43 CFR 4.411 and 4.413).

ADDRESSES: You may obtain a copy of the Record of Decision from: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, NV 89801, and you must also send a copy to: Office of the Regional Solicitor, Salt Lake City Federal Building, 125 South State Street, Salt Lake City, UT 84138.

FOR FURTHER INFORMATION CONTACT: Roger Congdon, Project Coordinator, Elko Field Office, Bureau of Land Management, 3900 Idaho Street, Elko, Nevada 89801, (775) 753–0200.

SUPPLEMENTARY INFORMATION: As authorized by Section 202 of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Elko Field Office prepared an Environmental Impact Statement (EIS) under a third party contract, to analyze impacts and alternatives for Newmont Mining Corporation's proposed South Operations Area Project Amendment. The proposed project expansion would result in disturbance of an additional 1392 acres of federal and private lands located in Eureka County, Nevada. The

Notice of Availability of the Final EIS was published in the **Federal Register** April 26, 2002 (67 FR 20821).

The Elko Field Office Manager will sign the Record of Decision (ROD) concurrent with this notice approving the project and incorporating mitigating modifications analyzed under the proposed action. The decision to approve the mining operation will be in full force and effect, effective when the Field Office Manager signs the Record of Decision. A petition for a stay of the decision must be filed in accordance with the regulations at 43 CFR part 4.

Copies of the ROD can be obtained from the Elko Field Office at 3900 Idaho Street, Elko, Nevada, or by calling (775) 753–0200 and requesting a copy of the document. You may also download the document from the Elko Field office internet site at *http://www.nv.blm.gov/elko.* Additionally, we will mail a copy of the ROD to individuals, agencies or companies that commented during the scoping process, or on the Draft and Final EIS.

Dated: July 10, 2002.

Helen Hankins,

Elko Field Office Manager.

[FR Doc. 02–18494 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–02–5101–ER–F323; NVN66472, NVN73726, N–66150, N–61191]

Notice of Availability of the Final Environmental Impact Statement for the Table Mountain Wind Generating Facility

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) to (1) announce the 30-day waiting period per 40 CFR 1506.10 after publication of this Final Environmental Impact Statement (FEIS) for the Table Mountain Wind Generating Facility (WGF); and (2) announce locations where copies of the FEIS can be obtained for reading.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, a FEIS has been prepared by the Bureau of Land Management (BLM), Las Vegas Field Office for the Table Mountain WGF. The FEIS was prepared to analyze the impacts of issuing rights-of-way for arrays of wind turbines and ancillary facilities located on 300 acres of public land within the Table Mountain WGF study area administered by the BLM.

DATES: The FEIS 30-day waiting period will start with the Environmental Protection Agency (EPA) publication in the **Federal Register** of the Notice of Availability for the FEIS on July 26, 2002. Copies of the FEIS will be mailed to individuals, agencies, or companies who previously requested copies.

ADDRESSES: Public reading copies of the FEIS will be available for reading at public libraries located at the following addresses:

- 650 West Quartz Avenue, Sandy Valley, NV
- 365 West San Pedro, Goodsprings, NV
- 4280 South Jones Blvd., Las Vegas, NV

A limited number of copies of the document will be available at the following BLM offices:

- Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV
- Bureau of Land Management, Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, NV

FOR FURTHER INFORMATION CONTACT: Jerry Crockford, Project Manager, Bureau of Land Management, Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, NV 89130–2301. Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401; telephone (505) 599–6333, cellular telephone (505) 486–4299, or electronic mail *jcrockfo@nm.blm.gov.*

SUPPLEMENTARY INFORMATION: The FEIS addresses alternatives to resolve the following major issues: air quality, increased recreation, mining claims, birds and bats, big horn sheep, threatened or endangered species, cultural resources and traditional cultural properties, transportation, visual resources, noise, and socioeconomics. The proposed action and alternatives can be summarized as: Proposed Action—Construct arrays containing a total of 153 wind turbine generators (WTGs) consisting of a combination of the two sizes of turbines identified in Alternatives A and B, and ancillary facilities; *Alternative A*—Construct arrays containing a total of 187 NEG Micon Model 900/52 WTGs and ancillary facilities; *Alternative B*—Construct arrays containing a total of 135 NEG Micon Model 1500 C WTGs and ancillary facilities; and *Alternative C*—No Action.

The proposed action is the Agency Preferred Alternative. It is to construct, operate, and maintain a WGF producing 205-megawatts (MWs) and ancillary facilities on approximately 300 acres of public land within the Table Mountain WGF study area. The fully constructed WGF would consist of arrays containing a total of 153 WTGs. The WTGs installed would be a combination of the NEG Micon Model 900/52 (each producing 800 kilowatts) and NEG Micon 1500 C (each producing 1.5 MWs) turbines. Ancillary facilities consist of access roads, underground and overhead 34.5 kilovolt (kV) distribution lines, 230 kV electric transmission lines, an electric sub-station, a control building, and various temporary use areas. The WGF would operate 24 hours per day, 365 days a year, and produce in excess of 460 million kilowatt-hours annually. The anticipated life of the facility would be longer than 20 years. The rights-of way would be granted for 20 years with the right to renew.

Alternative A would essentially be the same as the Proposed Action but would consist of arrays containing a total of 187 NEG Micon Model 900/52 WTGs and ancillary facilities. Under Alternative A, there would be 22 percent more towers, turbines, and transformers. This would cause an increase in total of land disturbance as compared to the Proposed Action.

Alternative B would essentially be the same as the Proposed Action but would consist of arrays containing a total of 135 NEG Micon Model 1500 C WTGs and ancillary facilities. Under Alternative B, there would be 12 percent fewer towers, turbines, and transformers. This would cause a reduction in total acres of land disturbance as compared to the Proposed Action.

Under the No Action Alternative, BLM would not issue right-of-way grants for the WGF and ancillary facilities. The WTGs, access roads, underground and overhead 34.5 kV distribution lines, 230 kV electric transmission lines, electric sub-station, control building, and various temporary use areas would not be constructed/utilized. Wind resources at Table Mountain would remain undeveloped.

Public participation is occurring throughout the processing of this project. A Notice of Intent was filed in the **Federal Register** on December 29, 2000. Two rounds of public meetings consisting of three meetings each were held. Comments presented throughout the process have been considered.

Dated: May 31, 2002.

Angie C. Lara,

Acting Field Manager.

[FR Doc. 02–18401 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–0293–02–1310–PB–026L–241A]

National Petroleum Reserve-Alaska Research and Monitoring Advisory Team (RMT) Public Meeting

AGENCY: Northern Field Office, Bureau of Land Management, Interior.

ACTION: Notice of the National Petroleum Reserve—Alaska Research and Monitoring Advisory Team Public Meeting.

SUMMARY: A public meeting of the National Petroleum Reserve—Alaska Research and Monitoring Advisory Team (NPR–A RMT) will be held in Fairbanks, Alaska on September 17, 2002, to discuss research and monitoring needs in NPR–A and to make recommendations to the Authorized Officer on priority projects to be funded by the BLM.

DATES: The public meeting will be held at the BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska from 9 a.m. to 4 p.m. on September 17, 2002.

PUBLIC PARTICIPATION: Public comments will be taken during the meeting from 1 p.m. to 1:30 p.m.

FOR FURTHER INFORMATION: Additional information concerning the NPR–A Research and Monitoring Advisory Team may be obtained from Herb Brownell, Arctic Team Manager, BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska 99709–3844. Mr. Brownell may be reached at (907) 474–2333 or at 1–800–437–7021, x2333, or by e-mail at *Herb_Brownell@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The RMT advises the BLM on NPR–A research and monitoring needs. It also assesses whether existing mitigative stipulations, established in the 1998 Record of Decision for the Northeast NPR–A Integrated Activity Plan/Environmental Impact Statement, are effective and appropriate. The Team develops and recommends research priorities, and it applies improved technology and operating practices to oil and gas exploration and possible development in NPR–A. The RMT's membership, appointed by the Secretary of the Interior, consists of representatives from the public at large, environmental and conservation groups, the oil and gas industry, the academic research community, and governmental agencies. In addition to the BLM, agencies with representatives on the RMT include the U.S. Geological Survey—Biological Resources Division, Minerals Management Service, Department of Energy, U.S. Fish and Wildlife Service, and the North Slope Borough.

Dated: June 13, 2002.

Robert W. Schneider,

Field Manager.

[FR Doc. 02–18878 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–01–0777–30]

Northeastern Great Basin Resource Advisory Council meeting location and time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's Meeting Location and Time

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: approval of minutes of the previous meetings, Off-Highway Vehicle Draft Guidelines, Vegetation Draft Guidelines, 3809 Guidelines, Field Managers' and District Rangers' reports.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Dates, Times, Place: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada, 89301; August 15, 2002, beginning at 9 a.m.; public comment period 1:30 p.m.; tentative adjournment at 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Specialist, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801, telephone (775) 753–0386.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Helen Hankins,

Field Office Manager, Elko Field Office.

[FR Doc. 02–18891 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–1220–HS: G 01–156]

Temporary Motor Vehicle Closure; Three River Resource Area, Hines, OR

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of temporary motor vehicle closure on public land administered by the BLM, Burns District, Three Rivers Resource Area, Hines, Oregon.

SUMMARY: The following described public land in Harney County is being temporarily closed to the use of motorized vehicular traffic pursuant to 43 CFR 8364.1:

The closure applies to the following road segments:

The Skull Creek Road No. 7203–0–OO, from its junction with the Radar Hill County Road in the SW¼NE¼, Section 3, T. 23 S., R. 30 E., W.M. approximately 20 miles north to its junction with the Emigrant Crossing Road in NW¼NW¼, Section 33, T. 20 S., R. 29 E., W.M.

The Horton Mill Road No. 7208–0–CO, from its junction with Forest Road 47 in the SW¼SE¼, Section 6, T. 22 S., R. 29 E., W.M. approximately 4 miles east to its junction with the Skull Creek Road in the NW¼NW¼, Section 2, T. 22 S., R. 29 E., W.M.

The Moon Reservoir Road Nos. 7227–1–OO and 7227–1–AO, from its junction with the ''OO'' County Road in the SE¼SE¼, Section 15, T. 25 S., R. 28 E., W.M. approximately 7.5 miles northwest to gates leading into private land in the NW¼NW¼, Section 30, T. 24 S., R. 28 E., W.M. and the NE¼NW¼, Section 25, T. 24 S., R. 27 E., W.M.

All public land in Section 29, T. 23 S., R. 26 E., W.M. west of the Chickahominy Reservoir Access Road; south and west of the waterline of Chickahominy Reservoir; and north of U.S. Highway 20; and NE¼SW¼, Section 28, T. 23 S., R. 26 E., W.M. except that land in Chickahominy Campground, as gated and posted.

This closure is necessary to prevent damage to roads and adjacent resources during extremely wet springtime conditions. Unrestricted traffic during this time of year is creating excessive impacts to soil and vegetative resources

resulting in erosion. Indiscriminate springtime off-road vehicle use also contributes to sedimentation of Chickahominy Reservoir. Additionally, funds are not readily available to routinely repair and maintain roads damaged by vehicular traffic.

DATES: This closure will take effect when wet conditions dictate and upon posting the land as closed to vehicular traffic. The closure will remain in effect until the soil conditions have dried sufficiently to prevent damage to the road and adjacent resources, as determined by the Authorized Officer.

Exemptions: Persons who are exempt from these rules include:

1. Any Federal, State, or local officer or employee in the scope of their duties, members of any organized rescue or fire fighting force in performance of an official duty.

2. Motorized watercraft or snowmobiles.

3. Other individuals in the possession of a written waiver or other authorization who, as determined by the Authorized Officer, have a demonstrated need to travel by motorized vehicle in the area being closed.

Supplementary Rules for Road Closure Area: Under 43 CFR 8364.1, the BLM will enforce the following rules on the public land within the road closure area, Three Rivers Resource Area, Burns District, Hines, Oregon. You must follow these rules:

1. You must not operate a motorized vehicle on a closed road or area.

2. You must obey all posted signs in a road closure area.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Fred McDonald, BLM, 28910 Hwy 20 West, Hines, Oregon 97738, phone (541) 573–4453.

Dated: July 17, 2002.

Joan M. Suther,

Three Rivers Resource Area Field Manager.

[FR Doc. 02–18956 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Survey Plat Filings

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Filing of amended protraction diagram plats.

SUMMARY: The plats of the amended protraction diagram accepted June 11, 2002, of the following described lands, are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Principal Meridian, Montana

Tps. 8, 9, 10, 11, and 12 S., Rs. 1, 2, and 3 W.

The plat, representing the Amended Protraction Diagram 58 Index of unsurveyed Townships 8, 9, 10, 11, and 12 South, Ranges 1, 2, and 3 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 8 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 8 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 9 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 9 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 9 S., R. 1 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 9 South, Range 1 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 10 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 10 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 11 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 11 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 11 S., R. 1 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 11 South, Range 1 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 12 S., R. 1 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 12 South, Range 1 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 12 S., R. 2 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 12 South, Range 2 West, Principal Meridian, Montana, was accepted June 11, 2002.

T. 12 S., R. 3 W.

The plat, representing Amended Protraction Diagram 58 of unsurveyed Township 12 South, Range 3 West, Principal Meridian, Montana, was accepted June 11, 2002.

The amended protraction diagram was prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagram, accepted June 11, 2002, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this amended protraction diagram, accepted June 11, 2002, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagram will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

Dated: June 26, 2002.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–18886 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–933–1430–ET; AA–40482]

Public Land Order No. 7529; Partial Revocation of Departmental Order dated May 14, 1929, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Departmental Order, insofar as it affects approximately 1,892 acres of land withdrawn for Power Site Classification No. 221 at Lake Kathleen. The land is

no longer needed for the purpose for which it was withdrawn. The land is within the Tongass National Forest, and is part of the Admiralty Island National Monument Wilderness. Approximately 926.57 acres have been conveyed out of Federal ownership.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Susan J. Lavin, Bureau of Land Management Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–217–5477.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Departmental Order dated May 14, 1929, as modified, which withdrew National Forest System land for Power Site Classification No. 221 in the Lake Kathleen area, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Tongass National Forest

All lands below an altitude of 500 feet above sea level adjacent to Lake Kathleen and the stream which is its outlet. The outlet stream of Lake Kathleen enters a small bight called Jima Cove in approximate latitude 57°53½′ N., longitude 134°44′ W., and more particularly described in the U.S. Geological Survey Interpretation No. 247 dated January 20, 1936, as:

T. 46 S., R. 66 E., sec. 9, lots 1 to 5, inclusive, and E½; sec. 16, NE¼NE¼; and All unsurveyed lands within ¼ mile of Lake Kathleen, and all unsurveyed lands within ¼ mile on the south side of the stream which is its outlet, and all unsurveyed lands between said outlet stream and the projection east to Lake Kathleen of the line constituting the north boundary of section 9.

The area described contains approximately 1,892 acres.

2. The National Forest System land will remain withdrawn as part of the Tongass National Forest, and the Admiralty Island National Monument Wilderness pursuant to Section 703(a)(1) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 1132 (1994). This action is for record clearing purposes as to those lands that have been conveyed out of Federal ownership.

Dated: July 2, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–18893 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 7033 and AZAR 034182]

Public Land Order No. 7528; Revocation of Public Land Order Nos. 3684 and 5368; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order Nos. 3684 and 5368 in their entirety as to 1,059.61 acres of National Forest System lands withdrawn for several water sources within the Superstition Wilderness Area, the Tortilla Flat Campground, and the Weaver's Needle Recreation Area. All of the lands are located within the Superstition Wilderness Area, therefore the withdrawals are no longer needed.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

Public Land Order Nos. 3684 (30 FR 7821) and 5368 (38 FR 20329), which withdrew National Forest System lands for several water sources within the Superstition Wilderness Area, the Tortilla Flat Campground, and the Weaver's Needle Recreation Area, are hereby revoked in their entirety.

SUPPLEMENTARY INFORMATION: The lands are located within the Superstition Wilderness Area, Tonto National Forest. The lands still need protection from mining but since they are located within the Wilderness Area, which closes the lands to mining, the withdrawals are no longer needed.

Dated: July 2, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–18892 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; IDI–15261]

Public Land Order No. 7526; Modification of Secretarial Order Dated October 7, 1908; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a Secretarial Order insofar as it affects 201.65 acres of public lands withdrawn for the Bureau of Reclamation's Minidoka Reclamation Project. The lands are no longer needed for the purpose for which they were withdrawn and the modification is needed to permit a land tenure adjustment. This action will open the lands to exchange only.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated October 7, 1908, which withdrew lands for the Bureau of Reclamation's Minidoka Reclamation Project, is hereby modified insofar as it affects the following described public lands to allow for exchange in accordance with Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended, 43 U.S.C. 1716 (1994):

Boise Meridian

T. 9 S., R. 20 E.,
sec. 13, lots 1 to 7, inclusive;
sec. 14, lots 3 to 5, inclusive.

The areas described aggregate 201.65 acres in Lincoln County.

2. The lands described in paragraph 1 are hereby made available for exchange in accordance with Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended, subject to valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law.

Dated: July 2, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–18879 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Prepare an Environmental Impact Statement for the Systems Conveyance and Operations Program

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for the Systems Conveyance and Operations Program.

SUMMARY: Under the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, the Bureau of Reclamation, Lower Colorado Region (Reclamation) and the National Park Service (NPS), Lake Mead National Recreation Area, propose to prepare an Environmental Impact Statement (EIS). Reclamation and the NPS are preparing the EIS as joint-lead Federal agencies to evaluate the potential impacts associated with the construction, operation, and maintenance of the Systems Conveyance and Operations Program (SCOP), which may include process improvements, supplemental treatment facilities, and/or a transmission facility to convey treated effluent directly into and under the surface of the Colorado River system within the Lake Mead National Recreation Area.

Current effluent discharge is causing erosion problems to wetlands within the Las Vegas Wash, especially within the Clark County Wetlands Park where wetland restoration is underway. The SCOP is intended to maintain the integrity and quality of the treated effluent as it increases through time and is conveyed into Lake Mead. The project will also reduce erosion within Las Vegas Wash and the Clark County Wetlands Park aiding in their restoration.

ADDRESSES: You may submit comments concerning the EIS's scope, the issues to cover, the alternatives to consider, and other resource concerns. Your comments may be submitted by mail or hand delivered to Mr. James Green, Regional Environmental Officer, Bureau of Reclamation, Lower Colorado Region, LC–2530, P.O. Box 61470, Boulder City, NV 89006–1470; or Mr. William K. Dickinson, Superintendent, National Park Service, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, NV 89005. Comments will be accepted for 45 days after publication of this notice and will conclude on September 1, 2002.

Written comments received by Reclamation and the NPS become part of the public record associated with this action. Accordingly, Reclamation and the NPS make these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their name and address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, 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 letter. We will make all submissions from organizations or businesses, and from individuals themselves as representatives or officials of organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety. Anonymous comments will not be considered.

Hearing impaired, visually impaired, and/or mobility impaired persons planning to attend these meeting may arrange for necessary accommodations by contacting Ms. Carrie Stewart at telephone (702) 939–6101, extension 222 or faxogram (702) 939–6108, no later than two weeks prior to the meeting date.

DATES: Reclamation, the NPS, and the Clean Water Coalition will conduct public meetings in open house format to involve the public in issue identification and the alternative development processes. Oral and written comments will be accepted at the public scoping meetings to be held at the following locations:

August 12, 2002, 6:30–8:30 p.m., Henderson Convention Center, 200 S. Water St., Henderson, Nevada.

August 13, 2002, 6:30–8:30 p.m., Winchester Community Center, 3130 S. McLeod Dr., Las Vegas, Nevada.

August 14, 2002, 6:30–8:30 p.m., West Flamingo Senior Center, 6255 W. Flamingo Road, Las Vegas Nevada.

August 15, 2002, 6:30–8:30 p.m., West Sahara Library, 9600 W. Sahara Avenue, Las Vegas, Nevada.

August 19, 2002, 6:30–8:30 p.m., Tempe Mission Palms Resort, 60 E. 5 St., Tempe, Arizona.

August 20, 2002, 6:30 to 8:30 p.m., Black Canyon Conference Center, 9440 N. 25th Ave., Phoenix, Arizona.

August 22, 2002, 6:30 to 8:30 p.m., Regency Room, Radisson in Mission Valley, 1433 Camino del Rio So., San Diego, California.

August 23, 2002, 6:30 to 8:30 p.m., Hyatt Regency Conference Center, 285 N. Palm Canyon Dr., Palm Springs, California.

FOR FURTHER INFORMATION: Contact Mr. James Green, Bureau of Reclamation; or Mr. William K. Dickinson, National Park Service at the addresses provided above under **ADDRESSES.**

SUPPLEMENTARY INFORMATION: The project proponent of the SCOP is the Clean Water Coalition, which is comprised of the City of Las Vegas, City of Henderson, and the Clark County Sanitation District, Las Vegas, Nevada. Construction activities and infrastructure associated with the SCOP would be located on private land, City of Las Vegas land, City of Henderson land, Clark County land, Reclamation lands in the area of the Las Vegas Wash, and lands administered by the NPS.

Currently, about 150 million gallons of treated effluent are discharged daily into the Las Vegas Wash, which then flows into Lake Mead. By 2030 it is estimated that this amount will increase to about 300 million gallons per day. The treated effluent meets Environmental Protection Agency and Nevada Department of Environmental Protection quality and quantity standards and will do so into the future. Before this treated effluent reaches Lake Mead, perchlorate and other contaminants in the Las Vegas shallow aquifer, and other non-point source contaminants, discharge into the Las Vegas Wash and mix with the treated effluent.

The EIS will address a range of alternatives, which include the no-action alternative and a number of action alternatives. The action alternatives will have a common physical element, which is an 84-inch to 114-inch diameter buried pipeline referred to as the Effluent Interceptor. It would have a capacity of about 300 million gallons per day of treated effluent derived from the three treatment facilities, and would end at a point located upstream of Lake Las Vegas. The action alternatives would diverge at the terminus of the Effluent Interceptor. The EIS will evaluate the potential environmental impacts associated with the Effluent Interceptor and the various alternatives including: no action (there will be no change to the current treatment processes and discharge locations); process improvements at the three treatment facilities; construction and operation of supplemental treatment facilities; and, construction and operation of a pipeline

that would transport highly-treated effluent from the three treatment facilities to one or more receiving areas underwater within the Colorado River system. An impairment analysis will be conducted for the portion of the project that will be located on NPS-administered land. The EIS will evaluate the alternatives to determine their effects on a number of resource issues including but not limited to the following: water quality, surface water hydrology, groundwater, biological resources/endangered species, cultural resources, recreation, land use, air quality, noise, socioeconomics, and other appropriate resource issues identified during the scoping process.

Dated: July 1, 2002.

Lorri Gray,

Assistant Regional Director, Lower Colorado Region.

[FR Doc. 02–18911 Filed 7–25–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–474]

Certain Recordable Compact Discs and Rewritable Compact Discs; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 24, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of U.S. Philips Corporation of Tarrytown, New York. Letters supplementing the complaint were filed on July 10, 2002 and July 16, 2002. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain recordable compact discs and rewritable compact discs by reason of infringement of claims 1, 5, and 6 of U.S. Letters Patent 4,807,209, claim 11 of U.S. Letters Patent 4,962,493, claims 1–3 of U.S. Letters Patent 4,972,401, claims 1, 3, and 4 of U.S. Letters Patent 5,023,856, claims 1–6 of U.S. Letters Patent 4,999,825, and claims 20, and 23–34 of U.S. Letters Patent 5,418,764. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, *Esq.,* Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2606.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on July 19, 2002, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain recordable compact discs or rewritable compact discs by reason of infringement of claims 1, 5, or 6 of U.S. Letters Patent 4,807,209, claim 11 of U.S. Letters Patent 4,962,493, claims 1, 2, or 3 of U.S. Letters Patent 4,972,401, claims 1, 3, or 4 of U.S. Letters Patent 5,023,856, claims 1–5 or 6 of U.S. Letters Patent 4,999,825, or claims 20, 23–33, or 34 of U.S. Letters Patent 5,418,764, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: U.S. Philips Corporation, 580 White Plains Road, Tarrytown, New York 10591.

(b) The respondents are the following companies alleged to be in violation of section 337, and are parties upon which the complaint is to be served:

Acme Production Industries, Room B & C, 7/F, Tai Chi Factory Building, 25–29 Kok Cheung Street, Tai Kok Tsui, Kowloon, Hong Kong.

Bregusa Micro International LLC, 22622 Lambert Street, Suite 306, Lake Forest, California 92630.

Digital Storage Technology Co., Ltd., 42 Kung 4 Road, LinKou 2nd Industrial Park, Taipei Hsien, Taiwan.

DiscsDirect.Com, 2165 South Bascom Avenue, Campbell, California 95008.

GigaStorage Corporation Taiwan, 2, Kuang Fu South Road, Hsinchu Industrial Park, Hsinchu, Taiwan.

GigaStorage Corporation USA, 174 Lawrence Drive, Suite C, Livermore, California 94550.

Jacsonic Group, 246 Clary Avenue, San Gabriel, California 91776.

J&E Enterprises, Inc., 7900 San Fernando Road, #B1, Sun Valley, California 91352.

KingPro Mediatek Inc., No 28, Chung Cheng 1st Street, Yung Kang City, 71042, Tainan Hsien, Taiwan.

Linberg Enterprise Inc., 1 Charles Avenue, Building 130 B, West Orange, New Jersey 07052.

NewEgg.Com, Inc., 132 South 6th Avenue, La Puenta, California 91746.

PNY Technologies, Inc., 299 Webro Road, Parsippany, New Jersey 07054.

QTC Computer Systems, Inc., 1374 East Edinger Avenue, Santa Ana, California 92705.

STI Certified Products, Inc., 42982 Osgood Road, Fremont, California 94539.

Symmetry Group, Inc., 11–27 44th Road, Long Island City, New York 11101.

Tiger Direct, Inc., 7795 West Flagler Street, Suite 35, Miami, Florida 33144.

TKO Media Inc., 9440 Telstar Avenue, Suite 2, El Monte, California 91731.

U.S. DigitalMedia, Inc., 21430 North 20th Avenue, Phoenix, Arizona 85027.

Xtraplus Corporation, 38929 Cherry Street, Newark, California 94560.

(c) Jeffrey R. Whieldon, *Esq.,* Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–A, Washington,

DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: July 22, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–18945 Filed 7–25–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–473]

In the Matter of Certain Video Game Systems, Accessories, and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 21, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Microsoft Corporation of Redmond, Washington. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video game system accessories by reason of infringement of the claims of U.S. Patent Des. 452,282 and U.S. Patent Des. 452,534. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: Rett V. Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 17, 2002, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video game systems, accessories, or components thereof by reason of infringement of the claims of U.S. Patent Des. 452,282 or U.S. Patent Des. 452,534, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Ultimate Game Club Ltd., 1491 Boston Post Road, Old Saybrook, Connecticut 06475.

(c) Rett V. Snotherly, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 19, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–18726 Filed 7–25–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2215–02; AG Order No. 2602–2002]

RIN 1115–AE26

Extension of the Designation of Somalia Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Somalia under the Temporary Protected Status (TPS) Program will expire on September 17, 2002. This notice extends the Attorney General's designation of Somalia for 12 months until September 17, 2003, and sets forth procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) with TPS to re-register for the additional 12-month period. Re-registration is limited to persons who both registered under the initial designation and also timely re-registered under each subsequent extension of designation, or who registered under the re-designation (which ends September 17, 2002). Nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of the TPS designation for Somalia is effective September 17, 2002, and will remain in effect until September 17, 2003. The 60-day re-registration period begins July 26, 2002 and will remain in effect until September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Emily Crowder Frazelle, Program Analyst, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have To Extend the Designation of Somalia Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (the Act) states that at least 60 days before the end of a designation, or any extension thereof, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer continues to meet the conditions for designation, the period of designation is extended automatically for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for a period of 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C).

Why Did the Attorney General Decide To Extend the TPS Designation for Somalia?

On September 16, 1991, the Attorney General designated Somalia under the TPS program (56 FR 46804). Since that time, the Departments of Justice and State have continuously reviewed conditions in Somalia, most recently extending and re-designating Somalia under the TPS program on September 4, 2001 (66 FR 46288).

A recent Department of State report found that ''[o]pen conflict remains a fact of life in southern Somalia, where numerous actors compete for land and power. While the two northern regions of Somalia are more stable, their security is jeopardized by the instability in the south.'' State Department Report (May 16, 2001) (State Department Report). There has been no central authority controlling Somalia since 1991. Immigration and Naturalization Service's (INS) Resource Information Center (RIC) Report (May 14, 2002). Although a peace process led to the establishment of a Transitional National Government (TNG), the ''legitimacy of the transitional administration * * * has been strongly contested by several local militias, as well as by the de facto governments that pre-date the TNG in the northern part of the country. Leaders in Puntland have publicly stated that they do not recognize the TNG, while Somaliland has openly sought international recognition on its own since 1991. Many TNG officials have been threatened or killed; an atmosphere of lawlessness continues.'' State Department Report.

Fighting in the Gedo region in southern Somalia has continued throughout 2002. The Department of State reports that ''[f]ighting in April result[ed] in a new outflow of an estimated 5,000 refugees into Kenya. The use of landmines in the region is also increasing. Hundreds of families were displaced in February in this region as a result of fighting between the Somali Restoration and Reconciliation Council and the Juba Valley Alliance. There is also reporting that Puntland, previously considered to be relatively stable, is becoming increasing [sic] insecure.'' State Department Report.

The United Nations Secretary-General reported in February 2002 that ''Somalia remains one of the most dangerous environments in which the United Nations operates,'' and concluded that the conditions do not currently exist to re-establish a comprehensive peace-building programme in Somalia. Report of the Secretary-General on the situation in Somalia (February 21, 2002). Such reports indicate that ongoing, armed conflict continues to threaten seriously the personal safety of those living and working in Somalia.

Based on this review, the Attorney General, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Somalia under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There is an ongoing armed conflict within Somalia and, due to such conflict, requiring the return of aliens who are nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1)(A). Furthermore, there exist extraordinary and temporary conditions in Somalia that prevent nationals of Somalia (and aliens having no nationality who last habitually resided in Somalia) from returning home in safety. 8 U.S.C. 1254a(b)(1)(C). Finally, permitting nationals of Somalia to remain temporarily in the United States is not contrary to the national interest of the United States. *Id.* On the basis of these findings, the Attorney General concludes that the TPS designation for Somalia should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Benefits Through the Somalia TPS Program, Do I Still Re-Register for TPS?

Yes. If you have already have TPS benefits through the Somalia TPS program, your benefits will expire on September 17, 2002. Accordingly, you must re-register for TPS in order to maintain your benefits through September 17, 2003. See the following re-registration instructions. TPS benefits include temporary protection against removal from the United States, as well as work authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted benefits under the Somalia TPS program who wish to maintain such benefits must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the $50 filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches × 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the fifty dollar ($50) fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the $50 fingerprint fee with the application for extension.

Submit the completed forms and applicable fee, if any, to the INS district office having jurisdiction over your place of residence during the 60-day re-registration period that begins on July 26, 2002 and ends on September 24, 2002 (inclusive of such end date).

If	Then
You are applying for an Employment Authorization Document that is valid through September 17, 2003.	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have an Employment Authorization Document or do not require such a document.	You must complete and file Form I–765 with no fee.
You are applying for an Employment Authorization Document and are requesting a fee waiver.	You must complete and file: (1) Form I–765 with no fee, and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Somalia (or alien having no nationality who last habitually resided in Somalia) who is otherwise eligible for TPS and has applied for, or plans to apply for asylum but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's eligibility to apply for TPS, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B)(i).

Does This Extension Allow Nationals of Somalia (or Aliens Having no Nationality Who Last Habitually Resided in Somalia) Who Entered the United States After September 4, 2001, to Apply for TPS?

No. This is a notice of an extension of the TPS designation for Somalia, not a notice of re-designation of Somalia under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to include nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who have not been continuously physically present in, and have not continuously resided in, the United States since September 4, 2001.

Is Late Initial Registration Possible?

Yes. Some persons may be eligible for late initial registration under 8 CFR 244.2. To apply for late initial registration an applicant must:

(1) Be a national of Somalia (or alien who has no nationality and who last habitually resided in Somalia);

(2) Have been continuously physically present in the United States since September 4, 2001;

(3) Have continuously resided in the United States since September 4, 2001; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period from September 4, 2001, through September 17, 2002, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Somalia Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(1), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Somalia for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Somalia under section 244(b) of the Act is extended for an additional 12-month period from September 17, 2002, to September 17, 2003. 8 U.S.C. 1254a(b)(3)(C).

(2) As of July 12, 2002, there are approximately 250 nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who are eligible for re-registration.

(3) To maintain TPS, a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who previously has applied for or received TPS benefits must re-register for TPS during the 60-day re-registration period from July 26, 2002 until September 24, 2002.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). There is no fee for a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization documentation, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization

documentation must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on September 17, 2003, the Attorney General will review the designation of Somalia under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register.** 8 USC 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Somalia under the TPS program will be available at local INS offices upon publication of this notice and the INS National Customer Service Center at 1–800–375–5283. This information will also be published on the INS Web site at *http://www.ins.usdoj.gov.*

Dated: July 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–18897 Filed 7–25–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the 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 supersedes decisions, thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number 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

None

Volume II

District of Columbia
DC020001 (Mar. 1, 2002)
DC020003 (Mar. 1, 2002)

Volume III

Florida
FL020001 (Mar. 1, 2002)
FL020014 (Mar. 1, 2002)
FL020017 (Mar. 1, 2002)

Volume IV

Wisconsin
WI02001 (Mar. 1, 2002)
WI02002 (Mar. 2, 2002)
WI02005 (Mar. 1, 2002)
WI02008 (Mar. 1, 2002)
WI02010 (Mar. 1, 2002)
WI02011 (Mar. 1, 2002)
WI02013 (Mar. 1, 2002)
WI02019 (Mar. 1, 2002)

Volume V

Kansas
KS020009 (Mar. 1, 2002)
KS020019 (Mar. 1, 2002)
KS020025 (Mar. 1, 2002)
KS020026 (Mar. 1, 2002)
KS020063 (Mar. 1, 2002)

Texas

TX020007 (Mar. 1, 2002)
TX020018 (Mar. 1, 2002)
TX020019 (Mar. 1, 2002)
TX020063 (Mar. 1, 2002)
TX020069 (Mar. 1, 2002)

Volume VI

Oregon
OR020001 (Mar. 1, 2002)
Washington
WA010001 (Mar. 1, 2002)
WA020005 (Mar. 1, 2002)
WA020008 (Mar. 1, 2002)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be

found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extension Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 17th Day of July 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–18523 Filed 7–25–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–092]

NASA Advisory Council, Aerospace Technology Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory (NAC) Council, Aerospace Technology Advisory Committee (ATAC), Aviation Safety Reporting System Subcommittee meeting (ASRSS).

DATES: Wednesday, September 25, 2002, 9 a.m. to 5 p.m.

ADDRESSES: General Aviation Manufacturers Association, 1400 K Street NW., Suite 801, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/960–6059.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

- Report on Aviation Safety Reporting System
- Future Planning for ASRS

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: July 22, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–19015 Filed 7–25–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 150–00004–CivP (EA 01–271), and ASLBP No. 02–802–01–CivP]

Decisive Testing, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.205, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Decisive Testing, Inc., San Diego, California, Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of Decisive Testing, Inc., for a hearing regarding an order issued by the NRC staff, dated June 11, 2002, entitled ''Order Imposing Civil Monetary Penalty'' (67 FR 41,741 (June 19, 2002)).

The Board is comprised of the following administrative judges:

Ivan Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents and other materials shall be filed with the Panel Judges in accordance with 10 CFR § 2.701.

Issued at Rockville, Maryland, this 22nd day of July, 2002.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–18969 Filed 7–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–25]

Foster Wheeler Environmental Corporation's Proposed Idaho Spent Fuel Facility; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent (NOI).

SUMMARY: Foster Wheeler Environmental Corporation (FWENC) submitted a license application on November 19, 2001 (67 FR 43358, June 27, 2002) for the receipt, possession, storage and transfer of spent nuclear fuel (SNF) and other radioactive materials associated with SNF at its proposed Idaho Spent Fuel Facility, an independent spent fuel storage installation (ISFSI), to be located on the Idaho National Engineering and Environmental Laboratory (INEEL) site in Butte County, Idaho. The license application will be considered under the provisions of NRC regulations at 10 CFR part 72. If granted, the license will authorize the applicant to store SNF in a dry storage system at the applicant's Idaho Spent Fuel Facility site.

Additionally, in accordance with Nuclear Regulatory Commission (NRC) regulations at 10 CFR part 51 and the National Environmental Policy Act (NEPA), an environmental impact statement (EIS) is being prepared to

examine the potential environmental impacts of the proposed licensing action (*i.e.* to construct and operate an ISFSI, including transfer of certain SNF from wet storage to dry interim storage pending its final transfer to a geologic repository).

At this time, the NRC is soliciting public comments on the scope of this EIS. Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify the significant issues related to the proposed action. It is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. Please see supplementary information for more details.

DATES: The public scoping process required by NEPA begins with publication of this NOI in the **Federal Register** and continues until September 16, 2002. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical. Comments will also be accepted by electronic or facsimile submission.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 72–25 when submitting comments. Due to the current mail situation in the Washington, DC area, commentors are encouraged to send comments electronically to *isffacility@nrc.gov* or by facsimile to (301) 415–5398, ATTN: Matt Blevins.

FOR FURTHER INFORMATION CONTACT: For environmental review questions, please contact Matt Blevins at (301) 415–7684, e-mail: *mxb6@nrc.gov.* For questions related to the safety review or licensing of the Idaho Spent Fuel Facility, please contact Randall Hall at (301) 415–1336.

Availability of Documents for Review: Information and documents associated with the Idaho Spent Fuel Facility project, including the Environmental Report submitted on November 19, 2001, and the License Application, may be obtained from the Internet on NRC's Idaho Spent Fuel Facility Web page: *http://www.nrc.gov/waste/spent-fuel-storage.html* (case sensitive). In addition, documents are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm.html.* Documents may also be obtained from NRC's Public Document Room located at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

During the last 40 years, the U.S. Department of Energy (DOE) and its predecessor agencies have generated, transported, received, stored, and reprocessed SNF at DOE facilities nationwide. Part of this SNF originated from non-DOE domestic, licensed facilities, including training, research, and test reactors at universities, commercial reactors, and government-owned installations for which DOE has contractual obligations to accept SNF. Most of this SNF is in wet storage at a site that overlies the Snake River Plain Aquifer, a major water source for the region. Among the SNF stored by DOE at the INEEL is SNF resulting from operation of the Peach Bottom Unit 1 nuclear power reactor, which was licensed by the Atomic Energy Commission and operated between 1966 and 1974. A Settlement Agreement dated October 17, 1995, between the DOE, the U.S. Navy, and the State of Idaho requires the transfer and dry storage of this SNF until it can be removed from Idaho. As part of its compliance with the Settlement Agreement, the DOE contracted with FWENC to design, license, construct, and operate the Idaho Spent Fuel Facility ISFSI at the INEEL to provide interim dry storage for a portion of the SNF covered by the Settlement Agreement.

DOE has previously issued a Record of Decision (60 FR 28680) pertaining to its SNF management program. DOE's decisions were based in part on the information and analyses contained in the final Environmental Impact Statement, ''*Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement, DOE/EIS–0203–F.*'' Volume 2 of the DOE EIS evaluates the potential impacts of the SNF management program at the INEEL (Appendix C of the DOE EIS contains additional information on foreseeable projects, including the Idaho Spent Fuel Facility ISFSI).

Previous to this application, NRC issued a license to DOE in 1998 for the construction and operation of another ISFSI at the INEEL for the storage of SNF from the Three Mile Island—Unit 2 reactor (TMI–2). This license was supported, in part, by the document, ''*Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation to Store the Three Mile Island Unit 2 Spent Fuel at the Idaho National Engineering and Environmental Laboratory.*'' The TMI–2 ISFSI is located adjacent to the proposed site of the Idaho Spent Fuel Facility.

Therefore, it is conceivable that many of the environmental impacts have been previously reviewed. The NRC and its contractor, Argonne National Laboratory, are currently reviewing appropriate documents to ensure efficiency and to make decisions regarding their use (*i.e.* supplementing, tiering, or adoption) in preparation of the Idaho Spent Fuel Facility EIS.

2.0 Idaho Spent Fuel Facility at INEEL

The Idaho Spent Fuel Facility is designed to provide safe interim dry storage for three basic kinds of SNF currently stored at the INEEL. The facility will primarily be used for storage of SNF from the Peach Bottom Unit 1 reactor but it will also be used for storage of SNF from the Shippingport reactor and SNF from the Training, Research, Isotope reactors built by General Atomics (TRIGA reactors). The Peach Bottom Unit 1 and Shippingport reactors ceased operation in 1974 and 1983, respectively. Because of the lengthy cooling period since final operation, these fuels produce relatively low decay heat compared to typical commercial SNF. The TRIGA reactor SNF originated from TRIGA research reactors worldwide. Although the age of the TRIGA reactor SNF varies, it also generates very low decay heat because of the design and operational characteristics of the TRIGA research reactors.

The Idaho Spent Fuel Facility will provide for receipt and repackaging of the SNF into sealed storage canisters. The canisters provide the primary confinement boundary for the SNF. These canisters are designed to ensure ready retrievability of the SNF and facilitate transfer of the SNF to a repository for eventual permanent disposal without the need for further direct handling or repackaging. The loaded and sealed canisters will be stored in individual storage tubes that have a bolted lid with double metallic O-ring seals. The storage tubes provide a redundant confinement boundary for the SNF. The storage area provides radiological shielding, passive natural convection air-cooling, and easily retrievable storage capability for the canisters. When a high-level waste geologic repository becomes available, the canisters may then be removed from the Idaho Spent Fuel Facility, loaded

into a transportation cask (to be certified in accordance with 10 CFR part 71), and transported off-site.

3.0 Purpose and Need for Agency Action

The proposed action to build the Idaho Spent Fuel Facility is intended to satisfy the requirements of a Settlement Agreement dated October 17, 1995, between the DOE, the U.S. Navy, and the State of Idaho that requires the transfer and dry storage of SNF until the SNF can be removed from Idaho.

4.0 Alternatives To Be Evaluated

Note that NRC is limited to issuing, issuing with conditions, or denying the materials license for the Idaho Spent Fuel Facility ISFSI at the INEEL. The DOE has already decided to pursue the ''regionalization by fuel type'' and the ''modified 10-year plan'' (which includes dry storage upgrades) approaches for management of SNF (60 FR 28680; June, 1, 1995). These decisions will not be revisited by NRC. Other alternatives not listed here may be identified through the scoping process.

4.1 Proposed Action

The proposed action involves the construction and operation of the Idaho Spent Fuel Facility ISFSI at the INEEL. The applicant would be issued an NRC license under the provisions of 10 CFR Part 72 that would authorize the applicant to transfer, repackage, and place into dry storage, certain types of spent nuclear fuel.

4.2 No Action: Do Not Issue License

The no-action alternative would be not to build the proposed Idaho Spent Fuel Facility. Under the no-action alternative, NRC would not approve the license application to construct and operate the proposed Idaho Spent Fuel Facility ISFSI and DOE would continue to store the SNF in it's current location on the INEEL in spent fuel pools.

5.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the EIS. This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Additions to or deletions from this list may occur as a result of the public scoping process.

—*Health and Safety:* potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios;
—*Waste Management:* types of wastes expected to be generated, handled, and stored; and the potential consequences to public safety and the environment;
—*Water Resources:* surface and groundwater hydrology, water use and quality, and the potential for degradation;
—*Air Quality:* meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
—*Earth Resources:* physical geography, topography, geology and soil characteristics;
—*Ecological Resources:* wetlands, aquatic and terrestrial resources, economically and recreationally important species, and threatened and endangered species;
—*Socioeconomic:* demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;
—*Natural Disasters:* floods, hurricanes, tornadoes, and seismic events;
—*Cumulative Effects:* impacts from past, present and reasonably foreseeable actions at and near the site(s);
—*Indirect Effects:* transportation to the Idaho Spent Fuel Facility;
—*Unavoidable Adverse Impacts;* and
—*Environmental Justice:* any potential disproportionately high and adverse impacts to minority and low-income populations.

Alternatives other than those presented in this document may warrant examination, and new issues may be identified for evaluation.

6.0 Scoping Comment Period

One purpose of this NOI is to encourage public involvement in the EIS process, and to solicit public comments on the proposed scope and content of the EIS. The NRC invites the following entities to participate in the scoping process:

a. The applicant, Foster Wheeler Environmental Corporation.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify the significant issues related to the proposed action. It is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

a. Ensure that concerns are identified early and are properly studied;

b. Identify alternatives that will be examined;

c. Identify significant issues that need to be analyzed;

d. Eliminate unimportant issues;

e. Identify and reference issues that have been previously analyzed; and

f. Identify public concerns.

7.0 Scoping Comments

Written comments should be mailed to: Michael T. Lesar, Chief, U.S. Nuclear Regulatory Commission, Rules & Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T6D59, Washington, DC 20555–0001. Please note Docket No. 72–25 when submitting comments.

Comments will also be accepted by e-mail. Interested parties may e-mail their comments to *isffacility@nrc.gov.* Comments will also be accepted by fax at 301–415–5398, ATTN: Matt Blevins.

The NRC will make the scoping summaries and project-related materials available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm.html.* The scoping meeting summaries and project-related materials will also be available on the NRC's Idaho Spent Fuel Facility Web page *http://www.nrc.gov/waste/spent-fuel-storage.html* (case sensitive).

8.0 The NEPA Process

The EIS for the Idaho Spent Fuel Facility will be prepared according to the National Environmental Policy Act (NEPA) of 1969 and NRC's NEPA Regulations (10 CFR part 51).

The draft EIS is scheduled to be published in May 2003. A 45-day comment period on the draft EIS is planned, and public meetings to receive comments will be held approximately three weeks after distribution of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meetings will be announced in the **Federal Register**, on NRC's Idaho Spent Fuel Facility Web page, and in the local news media when the draft EIS is distributed. The final EIS, which will incorporate public comments received

on the draft EIS, is expected in December 2003.

Dated at Rockville, Maryland, this 19th day of July, 2002.

For the Nuclear Regulatory Commission.

Cheryl Trottier,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–18967 Filed 7–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network; Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support Network Advisory Review Panel (LSNARP) will hold its next meeting on Wednesday and Thursday, September 18–19, 2002, at the Alexis Park, located at 375 East Harmon, Las Vegas, Nevada 89109. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

AGENDA: The meeting will be held from 8:30 a.m. to 5:00 p.m. on Wednesday, September 18 and from 8:30 to close of business on Thursday, September, 2001. The preliminary agenda is as follows:

Wednesday, September 18

8:30 am–8:45—LSNARP Chairman's Opening Remarks
8:45 am–9:30—LSN Administrator Progress Report on Status of LSN; Panel Discussion; Questions and Answers
9:30 am–10:00—LSN Project Manager Report on Status of Integration Efforts and Results of System Security Risk Assessment Performed by NSA
10 am–10:15—Break
10:15 am–10:45—Experience of Local Government in Setting Up Web site to make documents available To LSN (Lincoln County—Tentative)
10:45 am–11:15—Identification of participant training needs expectations for use of the LSN; training strategies and approaches; points of contact for coordination of training efforts; Discussion
11:15 am–12—Lessons Learned from Private Fuel Storage Hearings
12 pm–1:15—Lunch
1:15 pm–2—Revised Topical Guidelines 3.69
2 pm–2:45—Recapitulation of June 25–26 NRC/DOE Technical Meeting on ''Electronic Submission'' of Large Documents
2:45 pm–3—Break
3 pm–3:30—Review of Relevancy; Discussion
3:30 pm–4—Role of a rural county in the licensing—(distinction between party with standing, interested governmental party, etc.)
4 pm–4:30—Explain the importance of participation in the Licensing Support Network as a prerequisite for being a participant in the licensing process
4:30 pm—Open Discussion and Public Comments on Wednesday Topics

Thursday, September 19, 2001

9 am–10—Demonstration of Production Version 2.0 of the LSN
10 am–10:30—System Upgrade Prior to License Application
10:30 am–10:45—Break
10:45 am–11:15—Public Access via NRC & DOE reading rooms and Nevada libraries
11:15 am–12—Overview of NRC plans for the digital courtroom environment
12–1—Lunch
1–1:30—Impact of Homeland Security Reviews on Document Access via the LSN
1:30 pm–2—Open Discussion and Public Comments on Thursday Topics Adjourn

SUPPLEMENTARY INFORMATION: The LSN is an internet based electronic discovery database being developed to aid the NRC in complying with the schedule for decision on the construction authorization for the high-level waste repository contained in Section 114(d) of the Nuclear Waste Policy Act of 1982, as amended. In 1998, the NRC Rules of Practice in 10 CFR Part 2, Subpart J, were modified to provide for the creation and operation of the LSN, an internet-based technological solution to the submission and management of records and documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste. (63 FR 71729.) Pursuant to 10 CFR 2.1011(d), the agency has chartered the LSNARP, an advisory committee that provides advice to the NRC on fundamental issues relating to LSN design, operation, maintenance, and compliance monitoring.

FOR FURTHER INFORMATION CONTACT: U.S. Nuclear Regulatory Commission, Office of the Secretary, Mail Stop O–16 C1, Washington, DC 20555–0001; Attn: Andrew Bates (telephone 301–415–1963; e-mail *ALB@NRC.GOV*) or Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, Attn: Jack G. Whetstine (telephone 301–415–7391; e-mail *JGW@NRC.GOV*).

Public Participation: Interested persons may make oral presentations to the LSNARP or file written statements. An oral presentations request should be made to one of the contact persons listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: July 22, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–18970 Filed 7–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–3021 (which should be mentioned in all correspondence concerning this draft guide), is ''Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations.'' This draft guide is being developed to provide guidance on methods acceptable to the NRC staff on (1) identifying and characterizing capable tectonic sources and seismogenic sources, (2) conducting investigations to identify and characterize uncertainty in seismic sources important for the probabilistic seismic hazard analysis, (3) conducting probabilistic seismic hazard analyses for the site, and (4) determining the design earthquake ground motion for independent spent fuel storage installations and monitored retrievable storage installations.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received

may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by October 7, 2002.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *cag@nrc.gov.* For information about the draft guide and the related documents, contact Mr. M. Shah at (301) 415–8537; e-mail *mjs3@nrc.gov.*

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *pdr@nrc.gov.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *Distribution@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 22nd day of July, 2002.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 02–18968 Filed 7–25–02; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Application for Benefits Due but Unpaid at Death; OMB 3220–0055.

Under section 2(g) of the Railroad Unemployment Insurance Act (RUIA), benefits under that Act that accrued but were not paid because of the death of an employee shall be paid to the same individual(s) to whom benefits are payable under section 6(a)(1) of the Railroad Retirement Act.

The provisions relating to the payment of such benefits are prescribed in 20 CFR 325.5 and 20 CFR 335.5

The RRB provides Form UI–63 for use in applying for the accrued sickness or unemployment benefits unpaid at the death of the employee and for securing the information needed by the RRB to identify the proper payee. Completion is voluntary. One response is requested of each respondent.

The RRB propose no changes to the UI–63. The completion time for the UI–63 is estimated at 7 minutes. The RRB estimates that approximately 200 responses are received annually.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–18913 Filed 7–25–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Employee's Certification; OMB 3220–0140.

Section 2 of the Railroad Retirement Act (RRA), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if any of the employee's previous marriages create an impediment either to the current marriage between the employee and his or her spouse or to the marriage which previously existed between the employee and his or her former spouse.

The requirements relating to obtaining evidence for determining valid marital relationships are prescribed in 20 CFR 219.30 through 219.35.

Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G–346 to obtain the information needed for determining if any of the employee's previous marriages create an impediment to the current marriage. Form G–346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes no changes to Form G–346. The RRB estimates that 5,400 G–346's are completed annually at an estimated completion time of five

minutes per response. Total respondent burden is estimated at 450 hours.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–18927 Filed 7–25–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request for Internet Services.

(2) *Form(s) submitted:* Not applicable.

(3) *OMB Number:* 3220–XXXX.

(4) *Expiration date of current OMB clearance:* Not applicable.

(5) *Type of request:* New.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 5,000.

(8) *Total annual responses:* 10,000.

(9) *Total annual reporting hours:* 541.

(10) *Collection description:* The Railroad Retirement Board (RRB) will collect information needed to provide customers with the ability to request a Password Request Code and subsequently, to establish an individual PIN/Password, the initial steps in providing the option of conducting transactions with the RRB on a routine through the Internet as required by the Government Paperwork Elimination Act.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–18926 Filed 7–25–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Global Light Telecommunications, Inc., Common Stock, no par value) File No. 1–14864

July 19, 2002.

Global Light Telecommunications, Inc., a Canada corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in effect in the Territory of Yukon, Canada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer states that it will continue listing its Security on the TSX Venture Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and registration under Section 12(b) [3] of the Act or its obligation to be registered under Section 12(g) of the Act.[4]

The Board of Trustees (''Board'') of the Issuer unanimously approved a resolution on June 28, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board states that the Company obtained an order in the Supreme Court of British Columbia granting it certain relief under the Companies' Creditors Arrangement Act in Canada, including a stay of proceedings and protection from creditors.

Any interested person may, on or before August 12, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–18929 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Boston Stock Exchange, Inc. (Implant Sciences Corporation, Common Stock, $.10 par value, and Warrants, no par value) File No. 1–15087

July 19, 2002.

Implant Sciences Corporation, a Massachusetts corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value, and Warrants, no par value (''Securities''), from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The Issuer stated in its application that it has complied with the Rules of the BSE that govern the removal of securities from listing and registration on the Exchange. In making the decision to withdraw the Securities from listing and registration on the BSE, the Issuer considered the relative liquidity provided by the BSE versus other securities exchanges and the direct and indirect cost associated with maintaining multiple listings. The Issuer stated in its application that the Securities have been trading on the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

American Stock Exchange LLC (''Amex'') since May 8, 1999. The Issuer represented that it will maintain its listing on the Amex.

The Issuer's application relates solely to the Securities' withdrawal from listing on the BSE and shall not affect its listing on the Amex or its obligation to be registered under section 12(b) of the Act [3].

Any interested person may, on or before August 12, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–18928 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46235; File No. SR–Amex–2001–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rule 175 To Limit Specialists' Affiliations

July 19, 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 July 30, 2001, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 175 to prohibit Amex specialists from maintaining affiliations with persons that engage directly or indirectly in primary market making activities in the same security on another national securities exchange or facility of a national securities association.

The text of the proposed rule change appears below. New text is in *italics.*

Rule 175. Specialist Prohibitions

Paragraphs (a) through (c)—No change.

(d) No specialist or his member organization or any member, limited partner, officer, or approved person thereof shall act as a specialist or function in any capacity involving primary market making responsibilities on another national securities exchange or facility of a national securities association with respect to a security as to which the specialist is registered as such.

Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175. No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange states that in recent years member organizations that serve a market making function on the floor of the Exchange as specialists have grown in size and have become active on other United States markets. Similarly, market makers whose beginnings were in other markets have grown in size and have become active on the Exchange as market makers or specialists. The Exchange believes that while, generally, this has been a positive development for investors in that larger pools of capital are available for trading on the Exchange and other markets, questions have arisen as to whether a specialist on the Amex could act as the specialist or perform primary market making responsibilities in its Amex specialty securities on another market.

The Exchange believes that an Amex specialist or its affiliates should not act as a specialist or perform primary market making responsibilities on another market with respect to its Amex specialty securities.[3] The Exchange also believes that such affiliations raise competitive and conflict of interest concerns that cannot be ameliorated through internal controls, such as the Amex's Rule 193 information fire-wall procedures. Thus, having the same firm, or affiliates thereof, act as a primary market maker in the same security in two or more markets may tend to limit competition across markets. The Exchange asserts that a primary market maker may not be as vigorous in competing against a primary market maker on another marketplace that is part of the same firm or an affiliated entity. While the possible presence of other, non-affiliated market makers on one or both exchanges may help mitigate this competitive concern, the Exchange believes that the consistent presence of such market makers would vary from one security or market to another and is not assured.

The Exchange further believes that fulfilling primary market making responsibilities on more than one market poses conflict of interest issues for a firm. For example, according to the Exchange, it is perfectly appropriate in the context of Amex Rule 193 for the management of a member firm that operates an Amex specialist as well as other broker-dealer activities to allocate resources and assign personnel within the firm. The Exchange believes that if such a firm were to have an Amex specialist and a primary market maker in the same security on another market, these permissible resource allocation decisions could impact the competitive capabilities of the Amex specialist or the market maker on the other exchange to the possible detriment of the respective market makers and investors.

Therefore, the Exchange believes that codifying the Exchange's existing policy of prohibiting Amex specialists from being affiliated with a person that performs primary market making responsibilities in another United States market would maintain competition in the trading of securities because no

[3] According to the Exchange, the term ''specialty security'' includes Exchange-Traded Funds, options, equities, and Security Futures Products.

individual specialist unit would be permitted to trade the same security as a primary market maker on more than one market.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general and furthers the objectives of section 6(b)(5) of the Act,[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would impose no burden on competition and, in fact, will tend to strengthen and maintain competition. The Exchange further believes that competition among markets (and, as the result, the interests of investors) would be adversely impacted if a firm were permitted to act as the primary market maker in more than one market in the same security. The Exchange believes also that it is virtually impossible for a firm that acts as a primary market maker in the same security in more than one market to compete with itself, and that resource allocation decisions by the firm would tend to strengthen the capabilities of one of the market making operations to the detriment of the other(s). The prospect of the same or related firms posting inconsistent quotes and providing varying executions in different markets also may raise other concerns. As a result, the Exchange believes that it is appropriate and in the interests of promoting competition among markets and protecting the interests of investors to prohibit Amex specialists and their affiliates from acting in a primary market making capacity in the same security on another national securities exchange or facility of a national securities association.

[4] 15 U.S.C. 78f(b).

[5] 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

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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2001–55 and should be submitted by August 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18972 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46233; File No. SR–CHX–2002–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

July 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule19b–4 thereunder,[2] notice hereby is given that on June 28, 2002, the Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the CHX has prepared. 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 CHX proposes to amend its membership dues and fees schedule effective through July 31, 2002, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria, described below. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed change to the CHX fee schedule would provide for continued assessment of a marketing fee, in an amount equal to $.01 per share,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

applicable to transactions occurring on or before July 31, 2002. The marketing fee would apply only to ''Subject Transactions'' [3] in ''Subject Issues'' [4] and would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently assesses a marketing fee under a provision of the CHX fee schedule that is scheduled to expire by its terms on June 30, 2002.[5] Under the system currently in place, the CHX calculates, bills, and collects the marketing fee and gives the proceeds to the specialist firm trading the Subject Issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment-for-order flow arrangements relating to the Subject Issue (and possibly also to market makers who contribute to market share growth in certain instances).[6] The remaining undistributed funds in excess of $1000 are refunded, on a quarterly basis, to the paying parties *pro rata,* in proportion to the fees they have paid.

The marketing fee provision proposed herein does not differ from the previous version except that it would extend application of the marketing fee through July 31, 2002. This additional month will give the CHX the opportunity to evaluate further whether the marketing fee should be continued.

The CHX intends that the continued imposition of the marketing fee will allocate equitably the financial burden of seeking order flow for Subject Issues. According to the CHX, in the absence of the marketing fee the CHX specialist trading a Subject Issue is the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as licensing fees that the licensor of the product imposes.[7] CHX market makers participating in transactions in Subject Issues, conversely, do not currently share any of these costs. The proposed rule change would allow a specialist trading a Subject Issue to elect or decline imposition of the marketing fee depending on whether the specialist believes it is appropriate for a part of the financial burden of trading the Subject Issue to be allocated among those trading the Subject Issue. The CHX anticipates that the proposed rule change will continue to provide specialists trading Subject Issues with sufficient incentive to continue their efforts to attract additional order flow and increase market share.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act [8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The CHX received one written comment from a member in advance of the CHX Finance Committee meeting on June 18, 2002. This letter from Steven Shapiro of SJS Securities, Inc., a CHX specialist firm, asserted that the number of CHX market makers trading in exchange-traded funds (''ETFs'') has dropped from 15–20 to 3–5 since the imposition of the marketing fee. According to the CHX, Mr. Shapiro further argued that the marketing fee ''has no value at this time'' and that the CHX needed to focus on initiatives that would help the CHX market maker program ''thrive and prosper.''

The CHX believes that this analysis mistakenly attributes the decline in CHX market maker activity to the imposition of the marketing fee. In fact, the CHX believes that this decline is attributable to other factors, including significant competition for ETF order flow from other national market participants and alternative trading systems (''ATSs''). Indeed, as has been highly publicized in recent weeks, one ATS has recently captured nearly a one-third market share in the Nasdaq 100 ''QQQ'' product, a market share higher than that sustained by the QQQ listing market. Moreover, while the CHX acknowledges that imposition of the marketing fee does increase a market maker's cost of trading Subject Issues on the CHX, the CHX believes that the often significant costs associated with the Subject Issues, including increasingly hefty license fees, amply justify asking the CHX members who trade the Subject Issues to share the costs of attracting the order flow and trading these popular products on the CHX.

The CHX believes that this rationale is also readily applicable in response to a letter that the Commission received from Alvin Boutte, Jr., a CHX member who formerly traded the QQQ as a market maker. Mr. Boutte submitted a comment letter with respect to the CHX's prior submission extending the marketing fee through June 30, 2002. The Commission received Mr. Boutte's comment letter after the expiration of the abrogation period for that filing. The CHX believes that it is necessary and helpful to address Mr. Boutte's comment letter in the context of the CHX's proposed further extension of the marketing fee.

According to the CHX, Mr. Boutte contends that the additional expense borne by market makers that are subject to the marketing fee is an economic burden that cannot be sustained by smaller market participants and that, as a result, it is unfair. The CHX asserts that, contrary to Mr. Boutte's contentions, the marketing fee is not intended to hurt smaller market participants in any way. Rather, as set forth above, the CHX intends that the marketing fee would merely help shift some of the economic burden borne by specialists to other parties also trading exchange-traded fund products.

The CHX believes that Mr. Boutte is mistaken about two other points. First, Mr. Boutte states that the CHX does not have a process in place to ensure that specialist firms distribute the funds to order-sending firms in accordance with their payment for order flow arrangements relating to a particular security. The CHX believes, however, that it has taken steps to ensure that these funds are properly spent. The CHX notes that, in fact, the CHX

[3] ''Subject Transaction'' means (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] ''Subject Issue'' means any issue which constitutes an exchange-traded fund and meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (announcing immediate effectiveness of the new marketing fee provision to the CHX fee schedule through December 31, 2001; Securities Exchange Act Release No. 45282 (January 15, 2002), 67 FR 3517 (January 24, 2002) (extending program through June 30, 2002).

[6] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR-CHX–2001–10) (describing potential arrangements between specialists and market makers). According to the CHX, no such arrangements are currently in place. Conversation between Kathleen M. Boege, Associate General Counsel, CHX, and Patrick M. Joyce, Special Counsel, Division of Market Regulation, Commission, on July 18, 2002.

[7] The marketing fee, under the rule change proposed herein, will be assessed only against exchange-traded fund products, which virtually always have an associated licensing fee.

[8] 15 U.S.C. 78f(b)(4).

requires each specialist firm that receives marketing fees to certify, each month, that it is using the funds in accordance with payment for order flow arrangements in the issues for which the fee was collected. The CHX represents that, if it has reason to believe that a certification has been falsely given, it would review the specialist firm's books and, if the certification were found to be false, initiate appropriate disciplinary action against the firm.

According to the CHX, Mr. Boutte also states that the specialist firms have the right to choose whether a fee is charged or not, giving the impression that the specialist firms have a great deal of power in determining the fee. The CHX asserts that, as described above, it has imposed the $.01/share marketing fee on all trades that meet the definition of a Subject Transaction in a Subject Issue; a specialist firm may choose to waive the fee in a particular issue altogether, or it may receive the fees that are collected. The CHX notes, however, that a firm cannot choose to have the fee assessed only to certain market makers, nor can it decide to decrease the amount of the fee, whether for some or all market makers in the issue.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other CHX charge and therefore has become effective pursuant to section 19(B)(3)(A) of the Act [9] and Rule 19b–4(f)(2) thereunder.[10] At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate the 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 purpose 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. 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 the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–19 and should be submitted by August 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18971 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46239; File No. SR–PCX–2002–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Relating to Exchange Fees and Charges

July 19, 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 June 28, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. 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 its Schedule of Fees and Charges by changing the following fees for options: Regulatory fees (FOCUS filing fee, Registered Representative fee, and Designated Examining Authority (''DEA'') fee) and Floor and Market Maker fees (floor brokerage fees, telephone fees, the options surcharge, and the LMM shortfall fee). In addition, the Exchange, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE'' or ''Corporation'') proposes to amend its Schedule of Fees and Charges to change its Regulatory fees (Focus filing fee, Registered Representative fee, and DEA fee) applicable to ETP Holders and Sponsored Participants that access the Archipelago Exchange (''ArcaEx'') trading facility.

The text of the rule change is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make the following changes to its Schedule of Fees and Charges.

a. Regulatory Fees

i. FOCUS Filing Fee

The Exchange proposes to increase rates for Financial and Operational Combined Uniform Single Report (''FOCUS report'') filers from $25 to $100 per year. Pursuant to Commission rules, all broker-dealers for which the Exchange serves as the DEA are required to file FOCUS reports with the Exchange either monthly, quarterly or annually. The proposed fee increase is designed to offset the internal staff costs associated with processing hard-copy FOCUS report filings, including the cost of re-typing the report and reconciling any differences. The proposed fee applies to both options and equities.

ii. Registered Representative Fee

The Exchange currently charges a $50 annual fee for new applications, maintenance and transfer of registration status for each Registered Representative and each Registered Options Principal whose firm is a Member Firm of the Exchange. The Exchange proposes to increase the fee to $55 for options and equities. The Exchange believes this fee change is warranted based upon the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

increased costs relating to its regulatory oversight and enforcement program.

iii. DEA Fees

The Exchange proposes to increase its DEA fee to $250 per quarter for firms that do not engage in a public business. The Exchange will apply the fee to options and equities in order to offset actual costs incurred in performing its DEA function. The Exchange will not apply the fee to ''off floor'' trading firms that currently pay a $2,000 per month examination fee or to Member Organizations that can demonstrate that at least 25% of their income, as reflected on the most recently submitted FOCUS report, was derived from on-floor activities.

b. Floor and Market Maker Fees

i. Floor Brokerage Fees

The Exchange proposes to implement a fixed $500 monthly options floor brokerage fee. This new fee is intended to recover the cost of providing facilities and services for floor brokers on the Exchange.

ii. Telephone Fees

The proposal would increase telephone charges from $60 to $95 a month per telephone turret. The rate increase is necessary because the current rates that the Exchange charges for use of its telephone system does not cover the cost necessary to support the system and does not account for cost of dedicated staff to sustain the system. Moreover, the rate increase is intended to recover the Exchange's cost of replacing handsets. Finally, due to firm consolidation on the floor, there has been an increase in uncovered overhead cost that must be redistributed to the Members and Member Organizations.

iii. Options Surcharge

The Exchange proposes to increase the Options Surcharge Fee from 2.5% to 5.0%. This charge is intended to recover the Exchange's expenses in providing facilities and services to its Members.

iv. LMM Shortfall Fee

The Exchange proposes to increase the current Shortfall Fee threshold from 10% to 12% of the total national market share in an option issue. The fee is assessed at a rate of $0.35 on the shortfall amount for the top 120 issues (ranked by national volume) that do not meet the market share threshold.[3] This fee change is intended to recover the Exchange's expenses in providing facilities and services to its members.

The Exchange proposes to change only the amounts of the fees that are included in the proposed Schedule of Rates.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act, in general, and section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-PCX–2002–38 and should be submitted by August 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18973 Filed 7–25–02; 8:45 am]

BILLING CODE 8010–01–P

[3] See Securities Exchange Act Release No. 45351 (January 29, 2002), 67 FR 5631 (February 6, 2002).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9Q62]

State of Oklahoma

Muskogee and Sequoyah Counties and the contiguous Counties of Adair, Cherokee, Haskell, LeFlore, McIntosh, Okmulgee and Wagoner Counties in the State of Oklahoma; and Crawford and Sebastian Counties in the State of Arkansas constitute an economic injury disaster loan area as a result of the catastrophic collapse of the I–40 Bridge over the Arkansas River on May 26, 2002. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on April 22, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, FT. Worth, TX 76155.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

The number assigned for economic injury for this disaster is 9Q6200 for the State of Oklahoma and 9Q6300 for the State of Arkansas.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: July 22, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18977 Filed 7–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas; Amendment #5

In accordance with a notice received from the Federal Emergency Management Agency, dated July 17, 2002, the above numbered declaration is hereby amended to include Nueces County in the State of Texas as a disaster area due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

All contiguous counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 19, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–18978 Filed 7–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428]

State of Texas; Amendment #4

In accordance with a notice received from the Federal Emergency Management Agency, dated July 17, 2002, the above numbered declaration is hereby amended to include Callahan, Live Oak, San Patricio and Zavala Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

All contiguous counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 19, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–18979 Filed 7–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12897]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

DATES: CFIVAC will meet on Tuesday, August 21, 2002, from 9 a.m. to 5 p.m. and Wednesday, August 22, 2002, from 9 a.m. to 5 p.m. The meeting may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before August 2, 2002. Written material for distribution at the meeting should reach the Coast Guard on or before August 14, 2002. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before August 9, 2002.

ADDRESSES: CFIVAC will meet at the Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia 23699. The hotel's world wide Web site can be found at: *www.radisson.com/hamptonva.* Send written material and requests to make oral presentations to Mr. Kevin Frost, Commandant (G–MOC–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *www.dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Frost, Assistant to the CFIVAC Executive Director, telephone (202) 267–0315, fax (202) 267–0506. You can also visit the CFIVAC world wide Web site at: *http://www.uscg.mil/hq/g-m/cfvs/cfivac.htm* for up to date meeting information and a listing of the past meeting minutes.

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public. Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Approval of last meeting's minutes.

(2) Report from the Coast Guard on the status of legislative change proposals and regulatory projects with respect to mandatory exams, training requirements, stability requirements, and immersion suit requirements.

(3) Updated status report from the Coast Guard on casualty data and statistics.

(4) Presentation and discussion on Mid-Atlantic fishery issues.

(5) Discussions of industry roles and concerns under the new national security posture.

(6) Discussions and working group sessions by the committee on mandatory exams, security requirements, stability requirements, and regionalization issues.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than August 2, 2002. Written material for distribution at the meeting should reach the Coast Guard no later than August 14, 2002. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than August 9, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: July 16, 2002.

Joseph J. Angelo,

Acting Assistant Commandant for Marine, Safety, Security & Environmental Protection.

[FR Doc. 02–18915 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Passenger Facility Charge Audit Guide for Air Carriers—Procedures for Examining Air Carrier Passenger Facility Charge Collection, Remittance, and Reporting Practices

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Final Guidance Notice of Availability.

SUMMARY: The Federal Aviation Administration (FAA) is issuing final

guidance for conducting annual audits of air carrier Passenger Facility Charge (PFC) collection remittance, and reporting practices. An air carrier collecting PFC's from at least 50,000 passengers annually is required to provide for an annual audit of its PFC accounts by an accredited independent public accountant. An auditor engaged to audit the air carrier's PFC accounts is required to report ''on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenues.'' In addition, an auditor is required to report whether the quarterly reports of PFC accounts that the air carriers must provide to airports ''fairly represent the net transactions in the PFC account.''

The guidance is issued in final form after a review and comment period, during which the FAA evaluated the use of the guidance. Although the FAA did not receive formal comments on the use of the guidance, informal discussions with audit practitioners has lead the FAA to determine that the guidance meets its intended objectives. While the use of the guidance is voluntary, the FAA will have greater confidence in audits conducted in accordance with the guide.

Interested parties may access the Passenger Facility Charge Audit Guide for Air Carriers through the Internet at *http://www.faa.gov/arp/Reports/acaudit.pdf.*

Interested parties may access the Passenger Facility Charge Audit Guide for Air Carriers through the Internet at *http://www.faa.gov/arp/Reports/acaudit.pdf.* Alternatively, the guide may be obtained by contacting the individual listed below under the heading **FOR FURTHER INFORMATION CONTACT**.

DATES: Final guidance effective July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Hebert, Program Analyst, Passenger Facility Charge Branch, Airports Financial Assistance Division (APP–530), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3845.

Issued in Washington, DC on July 22, 2002.

Catherine M. Lang,

Director, Office of Airport Planning and Programming.

[FR Doc. 02–18999 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Route 9 Dover/Lakewood Project, Ocean County, NJ

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA and New Jersey Department of Transportation (NJDOT) are issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed widening of Route 9 to four lanes between Indian Head Road in Dover Township and Main Street in Lakewood Township in Ocean County, New Jersey. The four lanes would be separated by a grass median that would provide left-turn lanes at major intersections.

FOR FURTHER INFORMATION CONTACT: If you wish to be placed on the mailing list to receive further information as the study develops, contact Mr. Young Kim at Federal Highway Administration, 840 Bear Tavern Road, Suite 310, West Trenton, NJ 08628, Telephone: (609) 637–4233 or Mr. Steve Mikulak at New Jersey Department of Transportation, 1035 Parkway Avenue, P.O. Box 600, Trenton, NJ 08625–0600, Telephone: (609) 530–6558.

SUPPLEMENTARY INFORMATION:

I. Project Need and Description

Route 9 through Dover and Lakewood is a two-lane signalized roadway with a high volume of vehicles throughout the day, and especially during the morning and evening commuting hours, and the summer. This large vehicular volume, combined with left turning vehicles, and narrow shoulders results in poor levels of service for multiple hours of the day. This proposed project was developed to improve the operation, safety and level of service along this corridor.

The Township of Dover in 1999 and Township of Lakewood in 2000 each approved Resolutions of Support for the four lanes with grass median and left turn lanes concept. This concept will be studied under, at least, three alternatives: Left turn lane scheme with expansion to the east side of Route 9; Left turn lane scheme with expansion to the west side of Route 9; and, Left turn lane scheme that would ''snake'' the expansion between the east and west sides of Route 9. A fourth scheme that would be analyzed is the provision of jug-handles instead of left-turn lanes at select locations. The Draft EIS will document the analysis and elimination of alternatives, and only viable, constructible alternatives will be carried through the environmental analysis phase.

II. Scoping

The FHWA and NJDOT invite all interested individuals and organizations, and federal, state, and local agencies to provide comments on the scope of the study. During the scoping process, comments should focus on identifying specific social, economic, or environmental issues to be evaluated and suggesting alternatives, which may be less costly or have less environmental impacts, while achieving the similar transportation objectives. Comments should focus on the issues and alternatives for analysis and not on a preference for a particular alternative.

A public hearing will be held after publication of the Draft Environmental Impact Statement (DEIS) to obtain comments on the document. Public notice will be given of the time and place of the DEIS public hearing.

Scoping Meeting: Public scoping meetings for the Route 9 Dover/Lakewood EIS will be held on: Wednesday, September 18, 2002, 3 p.m. to 7 p.m., Lakewood Municipal Building, 231 Third Street, Lakewood, NJ 08701; and Wednesday, September 25, 2002, 3 p.m. to 7 p.m., Dover Township Municipal Complex, 33 Washington Street, Toms River, NJ 08753.

People with special needs should contact Mr. Steve Mikulak at NJDOT (a sign language interpreter will be made available upon request). The buildings are accessible to people with disabilities.

Oral and written comments may be given at the scoping meetings; a stenographer will record all comments.

Comment Due Date: Written comments on the scope of the EIS should be sent to Mr. Young Kim with FHWA by October 16, 2002 at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205. Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 18, 2002.

Young Kim,

Area Engineer, FHWA—New Jersey Division, Trenton.

[FR Doc. 02–19024 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–11733]

Agency Information Collection Submission for OMB Review: Notice of Request for Renewal of a Currently-Approved Information Collection: Federal Motor Carrier Safety Regulations, Accident Recordkeeping Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA announces that the Information Collection Request (ICR) described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval. On April 5, 2002, the FMCSA published a ''Notice of Request for Renewal of a Currently Approved Information Collection: Federal Motor Carrier Safety Regulations, Accident Recordkeeping Requirements'' in the **Federal Register**. Comments on the proposed information burden were solicited. No comments regarding the ICR were received. We are required to send ICRs to OMB under the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 26, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366–4009, Department of Transportation, Federal Motor Carrier Safety 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:

Title: Accident Recordkeeping Requirements.

OMB Number: 2126–0009.

Background: The Federal Motor Carrier Safety Regulations (FMCSRs), at section 390.15 of title 49 of the Code of Federal Regulations (CFR), require motor carriers to make all records and information pertaining to crashes (accidents) available to an authorized representative or special agent of the FMCSA upon request or as part of an inquiry. For the purposes of § 390.15, the word ''accident'' is defined as an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in: (1) A fatality; (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident; or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle (49 CFR 390.5). Occurrences involving only boarding and alighting from a stationary motor vehicle or involving only the loading or unloading of cargo are not included in the definition.

Motor carriers are required to maintain an accident register for one year after the date of the accident. The register must include a list of each accident. The information for each accident must include, at a minimum, the following elements: date of accident; city or town in which or most near where the accident occurred and the State in which the accident occurred; driver name; number of injuries; number of fatalities; and whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released. In addition, the register must contain copies of all accident reports required by State or other governmental entities or insurers.

There are no prescribed forms. The records are used by the FMCSA and its representatives as a source of information for investigations or special studies, and to assess the effectiveness of motor carriers' safety management controls.

Respondents: Motor carriers.

Estimated Burden: The FMCSA estimates approximately 155,000 accidents involving trucks and 17,000 accidents involving buses as defined in section 390.5 of the FMCSRs occur annually (source: National Highway Traffic Safety Administration General Estimates System). Of these, approximately 80 percent involve trucks and buses operated by interstate motor carriers. About 85 percent of the buses involved in crashes are school or transit buses and are not subject to this recordkeeping requirement. The number of accidents is therefore estimated to be 126,040 (124,000 (0.80 × 155,000) + 2,040 (0.80 × 0.15 × 17,000) = 126,040).

The agency estimates it takes approximately 18 minutes for interstate motor carriers to collect and record the seven elements of information on the accident register. Based on these assumptions, the agency estimates a time burden of 37,812 hours (126,040 × 18 minutes divided by 60 minutes) per year for accident report register information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.73.

Issued on: July 19, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–18918 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–11732]

Agency Information Collection Submission for OMB Review: Financial Responsibility, Trucking and Freight Forwarding

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA announces that the Information Collection Request (ICR) described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval. On March 26, 2002, FMCSA published a ''Notice of Request for Renewal of a Currently Approved Information Collection: Financial Responsibility, Trucking and Freight Forwarding'' in the **Federal Register**. Comments on the proposed information burden were solicited. No comments regarding the ICR were received. We are required to send ICRs to OMB under the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 26, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary

for FMCSA to meet its goal of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Lee, (202) 358–7028, Insurance Compliance Division (MC–ECI), Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 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:

Title: Financial Responsibility, Trucking and Freight Forwarding.

OMB Number: 2126–0017.

Background: The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registrations to the FMCSA. Registration remains valid only as long as the transportation entities maintain, on file with the FMCSA, evidence of the required levels of insurance coverage pursuant to 49 U.S.C. 13906. Regulations governing financial responsibility requirements are found at 49 CFR part 387.

Forms BMC–91, 91X, and 82 provide evidence of the required coverage for bodily injury and property damage (BI&PD) liability. Forms BMC–34 and 83 establish compliance with cargo liability requirements. Forms BMC–84 and 85 are filed by brokers to comply with the requirement for a $10,000 surety bond or trust fund agreement. Forms BMC–35, 36, and 85 cancel prior filings. Forms BMC–90 and 32 are endorsements that must be attached to BI&PD and cargo insurance policies, respectively, but are not filed with the FMCSA.

Motor carriers can also apply to self-insure BI&PD and/or cargo liability in lieu of filing certificates of insurance or surety bonds with the FMCSA. Form BMC–40 is the application used to apply for self-insurance authority.

Respondents: Motor carriers, freight forwarders, and brokers.

Estimated Burden Per Response: The estimated average burden per response for the BMC–40 is 40 hours. The estimated average burden per response for each of the other forms (BMC–32, 34, 35, 36, 82, 83, 84, 85, 90, 91, and 91X) is 10 minutes per form.

Estimated Total Annual Burden: The estimated total annual burden is 200 hours for the BMC–40 based on 5 filings per year (5 filings per year × 40 hours to complete = 200). The estimated total annual burden for all of the other forms described above is 45,025 hours based on 270,152 filings per year (270,152 filings per year × 10 minutes to complete divided by 60 minutes = 45,025 total burden hours). Therefore, the total burden hour request is 45,225 (200 estimated annual burden hours for the BMC–40 + 45,025 hours for the other forms = 45,225 total burden hours).

Frequency: Certificates of insurance, surety bonds, and trust fund agreements are required when the transportation entity first registers with the FMCSA and then when such coverages are replaced. Notices of cancellation are required only when such certificates of insurance, surety bonds, or trust fund agreements are canceled. Form BMC–40 is generally filed only when a carrier seeks approval to self-insure its BI&PD and/or cargo liability.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.73.

Issued on: July 19, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–18919 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub–No. 6)]

Railroad Revenue Adequacy—2001 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On July 26, 2002, the Board served a decision announcing the 2001 revenue adequacy determinations for the Nation's Class I railroads. No carrier is found to be revenue adequate.

EFFECTIVE DATE: This decision is effective July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 2001, determined to be 10.2% in *Railroad Cost of Capital—2001*, STB Ex Parte No. 558 (Sub-No. 5) (STB served June 20, 2002). This revenue adequacy standard was applied to each Class I railroad, and no carrier was found to be revenue adequate for 2001.

Additional information is contained in the Board's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20423. Telephone: 202 293–7776. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.] The decision is also available on the Board's Internet site at *www.stb.dot.gov*.

Environmental and energy considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory flexibility analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: July 19, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18849 Filed 7–25–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34222]

Fraser N.H. LLC—Acquisition Exemption—Rail Lines of Berlin Mills Railway, Inc.

Fraser N.H. LLC (Fraser), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from

Berlin Mills Railway, Inc. (Berlin Mills), approximately: (1) 5.5 miles of rail line between milepost 154.6 at Berlin, NH, and milepost 149.1 at Gorham, NH; and (2) 0.5 miles of rail line in the vicinity of Berlin, a total distance of approximately 6.0 miles in Coos County, NH.[1]

Fraser certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier, and that such revenues will not exceed $5 million annually.

The effective date of the exemption was July 10, 2002 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34222, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Amy S. Koch, Cameron McKenna LLP, 2175 K Street, NW., 5th Floor, Washington, DC 20037.

Board decisions and notices are available on our Web site at *''www.stb.dot.gov.''*

Decided: July 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18439 Filed 7–25–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Fraser recently acquired various assets of American Tissue, Inc. (ATI), as part of a sale within ATI's bankruptcy proceeding, including the railroad lines and other assets of Berlin Mills, a subsidiary of ATI. Fraser filed this exemption once it became aware of the need for Board approval. St. Lawrence & Atlantic Railroad Company (SLR) operates over the lines pursuant to a lease and operation exemption. *See St. Lawrence & Atlantic Railroad Company—Lease and Operation Exemption—Berlin Mills Railway, Inc.,* STB Finance Docket No. 33485 (STB served Oct. 24, 1997). According to Fraser, SLR will continue to operate over the lines under a lease agreement to be entered into with Fraser, whereupon SLR will file a petition for exemption under 49 U.S.C. 10502 for the lease transaction.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–314 (Sub–No. 2X)]

Chicago Central & Pacific Railroad Company—Abandonment Exemption-in Linn County, IA

On July 8, 2002, Chicago Central & Pacific Railroad Company (CCP) filed with the Surface Transportation Board (Board) a petition under U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a segment of the Marion-Louisa Industry Lead, extending from milepost ZA 225.7 to milepost ZA 229.5, a distance of approximately 3.8 miles in Linn County, IA. The line traverses U.S. Postal Service Zip Codes 52402 and 52302 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CCP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 25, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 19, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–314 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Michael J. Barron, Jr., 455 North Cityfront Plaza Dr., Chicago, IL 60611–5317. Replies to the CCP petition are due on or before August 19, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *''www.stb.dot.gov.''*

Decided: July 18, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18717 Filed 7–25–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning July 1, 2002, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2002–33 (*see,* 2002–25 IRB ____, dated June 25, 2002), the IRS determined the rates of interest for the calendar quarter beginning July 1, 2002, and ending September 30, 2002. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning October 1, 2002, and ending December 31, 2002.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
Prior to—				
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	093002	6	6	5

Dated: July 23, 2002.

Robert C. Bonner,

Commissioner of Customs.

[FR Doc. 02–18946 Filed 7–25–02; 8:45 am]

BILLING CODE 4820–02–P

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 2362/P.L. 107–202

Benjamin Franklin Tercentenary Commission Act (July 24, 2002; 116 Stat. 739)

H.R. 3971/P.L. 107–203

To provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover. (July 24, 2002; 116 Stat. 744)

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