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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 01–095–2]

Brucellosis: Testing of Rodeo Bulls

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by eliminating the annual brucellosis testing requirement for rodeo bulls moving interstate between brucellosis Class Free States. This action is based on our determination that the testing requirement for rodeo bulls moving between such States is more restrictive than the requirements for other test-eligible cattle, given that other cattle moving between Class Free States are not required to be tested for brucellosis. This action updates our brucellosis regulations by making the requirements for moving rodeo bulls more consistent with those for moving other test-eligible cattle between Class Free States.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Debra Cox, Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations contained in 9 CFR part 78, subpart B (referred to below as the regulations) restrict the interstate movement of cattle in order to prevent the spread of brucellosis. Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The regulations provide a system for classifying States or portions of States

according to the rate of *Brucella* infection present and the general effectiveness of a State's brucellosis eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are placed under Federal quarantine. The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification or reclassification as Class Free.

The regulations in § 78.14 have required rodeo bulls moving interstate to be tested for brucellosis once every 365 days. Since other test-eligible cattle being moved from a Class Free State are not required to be tested for brucellosis, this requirement for rodeo bulls moving between such States is more restrictive than the requirements for other test-eligible cattle.

On April 25, 2002, we published in the **Federal Register** (67 FR 20460–20461, Docket No. 01–095–1) a proposal to amend the brucellosis regulations by eliminating the annual brucellosis testing requirement for rodeo bulls moving interstate between brucellosis Class Free States. The proposal was intended to update our brucellosis regulations by making the requirements for moving rodeo bulls more consistent with those for moving other test-eligible cattle between Class Free States.

We solicited comments concerning our proposal for 60 days ending June 24, 2002. We received seven comments by that date. They were from industry and State government representatives, a representative of a rodeo cowboys' association, and members of the general public. Six of the seven commenters wrote in favor of the proposed rule.

The remaining commenter stated that he favored continuing the practice of having rodeo bulls tested for brucellosis when traveling interstate, but did not provide any information other than that statement.

We would point out that we are not eliminating the brucellosis testing requirement entirely. It will remain in effect for rodeo bulls moved between States that are not brucellosis Class Free. Secondly, as noted in our proposal, with 48 of the 50 States now classified as brucellosis Class Free, the risk of brucellosis transmission via interstate movement of rodeo bulls has been greatly reduced. Having more

restrictive requirements for rodeo bulls than for other test-eligible cattle no longer appears necessary. Therefore, we are not making any changes in response to this comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

In this rule, we are also updating the authority citation for 9 CFR part 78 to reflect the enactment of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*).

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule eliminates the annual brucellosis testing requirement for rodeo bulls moving interstate between brucellosis Class Free States and relieves stock contractors who raise and supply bulls for rodeo events of the financial burden associated with the testing. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the brucellosis regulations in § 78.14 by eliminating the annual brucellosis testing requirement for rodeo bulls moving interstate in cases where the bulls are being moved only between brucellosis Class Free States.

This rule primarily affects stock contractors who raise and supply bulls for rodeo events. More specifically, this rule affects stock contractors who are located in States other than Texas and Missouri—the only two States not currently classified as Class Free States—and who do not move their bulls interstate to Texas and Missouri. The number of stock contractors who fall into this category, as well as the total number of stock contractors nationally, is unknown.

Those stock contractors who move their bulls interstate only between Class Free States will realize a cost savings of about \$25 to \$30 per animal per year (*i.e.*, the cost of a brucellosis test and associated veterinary fees). Thus, a stock contractor with 20 bulls will see a savings of about \$500 to \$600 per year in testing expenses.

While stock contractors are not specifically categorized in the Small Business Administration's (SBA) table of small business size standards, they could be considered under either Subsector 112 of that table (Animal Production), which has a small entity threshold of \$750,000, or Subsector 711 (Performing Arts, Spectator Sports and Related Industries), which has a small entity threshold of \$6 million in annual sales. According to the National Agricultural Statistics Service, over 99 percent of all operations raising cattle and calves (\$750,000 threshold) are small entities, while large operations account for less than 1 percent. Therefore, it is likely that most, if not all, stock contractors would be considered small entities under SBA size standards.

Given that the savings per animal in foregone testing costs (\$25 to \$30) can be expected to make up only a small percentage of the total expenses associated with maintaining a rodeo bull (*e.g.*, feed and routine veterinary care), the economic impact of this rule is expected to be small.

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.

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 final 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

This final rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 is revised to read as follows:

Authority: 7 U.S.C. 8303–8306, 8308, 8310, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

2. Section 78.14 is amended by revising paragraph (a)(1) to read as follows:

§ 78.14 Rodeo bulls.

(a) * * *

(1) The bull is classified as brucellosis negative based upon an official test conducted less than 365 days before the date of interstate movement: *Provided, however*, That the official test is not required for a bull that is moved only between Class Free States;

* * * * *

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

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29753 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–57; Amendment 39–12938; AD 2002–22–12]

RIN 2120–AA64

Airworthiness Directives; Titeflex Corporation, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–22–12, applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses, that was published in the **Federal Register** on November 8, 2002 (67 FR 68024). An engine model referenced in the Applicability paragraph in the regulatory information is incorrect. This document corrects that reference. In all

other respects, the original document remains the same.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT:

Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive FR Doc. 02–28113 applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses, was published in the **Federal Register** on November 8, 2002 (67 FR 68024). The following correction is needed:

§ 39.13 [Corrected]

On page 68025, in the Regulatory Information, third column, third paragraph, thirteenth line, “General Electric CF6–80C and CFM–56 series, * * *” is corrected to read “CF6–80C and CFM56–5C, * * *.”

Issued in Burlington, MA, on November 14, 2002.

Mark C. Fulmer,

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

[FR Doc. 02–29673 Filed 11–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9023]

RIN 1545–BA39

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Unexpected Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these final regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent and do not possess the required

individual taxpayer identification number.

DATES: Effective Date: These regulations are effective November 22, 2002.

Applicability Date: For dates of applicability, see §§ 1.1441-6(h)(1) and 301.6109-1(g)(3).

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2002, the IRS and Treasury published a notice of proposed rulemaking by cross reference to temporary regulations (REG-159079-01) in the **Federal Register** (67 FR 2387), and temporary regulations in TD 8977 (67 FR 2327), under section 1441 and conforming changes to the regulations under section 6109 of the Internal Revenue Code (Code). Written comments and requests for a public hearing were solicited. Several comments were received and are discussed below. No public hearing was requested. After consideration of all the comments, the proposed and temporary regulations under sections 1441 and 6109 are adopted as final regulations with no changes.

Summary of Public Comments and Explanation of Revisions

A. § 1.1441-6(c) Exemption From Requirement To Furnish a Taxpayer Identifying Number

Section 1.1441-6(c) provides an exemption from the requirement to furnish a taxpayer identifying number (TIN) for certain types of income.

One commentator suggested that a foreign individual receiving a distribution of a death benefit from a U.S. retirement plan should be allowed to claim treaty benefits without obtaining an individual taxpayer identification number (ITIN).

This comment is not directly related to these proposed regulations. Exemptions from the requirement to furnish a TIN were addressed in final regulations promulgated under section 1441 (TD 8734; 1997-2 C.B. 109). The IRS and Treasury do not believe that there has been any change in circumstances that warrants a change of the rules contained in § 1.1441-6(c).

B. § 1.1441-1(e)(4)(ii)(B)(1) Indefinite Validity of a Withholding Certificate Provided Certain Conditions Are Met

Under § 1.1441-1(e)(4)(ii)(A), a Form W-8BEN "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," generally will expire either at the end of the third calendar

year following the date the certificate was signed or when a change in circumstances occurs that makes any information on the Form W-8BEN incorrect, whichever is earlier. Section 1.1441-1(e)(4)(ii)(B)(1) permits a Form W-8BEN to remain valid indefinitely, provided the withholding agent reports at least one payment annually and the certificate contains a TIN.

One commentator requested that a Form W-8BEN remain valid indefinitely without regard to the requirement that it contain a TIN. The commentator also proposed that a Form W-8BEN remain valid indefinitely, even if the withholding agent reports no annual payments to the beneficial owner.

This comment is not directly related to these proposed regulations. The period of validity of a beneficial owner's withholding certificate was addressed in final regulations promulgated under section 1441 (TD 8734). The IRS and Treasury do not believe that there has been any change in circumstances that warrants a change of the rules contained in § 1.1441-1(e)(4)(ii)(B)(1). The IRS and Treasury continue to believe that it is important for taxpayers to re-certify status periodically when no payments are reported because withholding agents would be unaware of any change in the taxpayer's status.

C. § 1.1441-6(h)(2)(i) Special Acceptance Agent Requirement

The proposed regulations provide that a withholding agent, who is also an acceptance agent, may enter into an agreement with the IRS that permits the acceptance agent to request an ITIN on an expedited basis because of the circumstances of payment or the unexpected nature of payments required to be made by the payor (special acceptance agent agreement). One commentator requested that certifying acceptance agents, as described in Rev. Proc. 96-52 (1996-2 C.B. 372), be permitted to utilize the expedited process, described in § 1.1441-6(h)(2), without entering into a special acceptance agent agreement with the IRS.

The commentator's suggestion was not adopted. The purpose of entering into a special acceptance agent agreement with the IRS is to provide notice to the IRS that the acceptance agent is seeking to utilize the expedited process and to have the acceptance agent agree to follow the special procedures necessary to complete that process. In contrast, a certifying acceptance agent agreement permits the acceptance agent to review and certify the applicant's ability to qualify for an ITIN. Because the purpose and scope of

a certifying acceptance agent agreement differ from the purpose and scope of the special acceptance agent agreement, a separate agreement permitting the use of the expedited process must be entered into between the acceptance agent and the IRS.

D. § 1.1441-6(h)(2)(ii) Unexpected Payment Requirement

In order to lessen the administrative burden on foreign individuals receiving unexpected payments, the proposed regulations provide a limited exception to the requirement that a foreign individual provide a TIN to the withholding agent before obtaining a reduced rate of withholding tax under an income tax treaty. One commentator requested that the IRS should eliminate the unexpected payment requirement of § 1.1441-6(h)(2)(ii) and permit the use of the expedited process by any foreign individual regardless of whether the payor or payee knows of the impending payment.

The commentator's suggestion was not adopted. The expedited process has been initiated in limited circumstances in order to lessen the administrative burden on foreign individuals receiving unexpected payments. Although the IRS is continuing to consider increasing the availability of this expedited process in the future, the particular administrative issue addressed in these regulations generally does not exist with respect to expected payments. Thus, there is not a compelling reason to extend the expedited process at this time.

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. These regulations impose no new collection of information on small entities; 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 Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the 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

Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1441-0 is amended by redesignating the entries for paragraph (g) of § 1.1441-6 as paragraph (h) and revising the entry for newly designated paragraph (h), and adding new entries for paragraphs (g) through (g)(5) to read as follows:

§ 1.1441-0 Outline of regulations provisions for section 1441.

* * * * *

(g) Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits.

- (1) General rule.
- (2) Special rule.
- (3) Requirement that an ITIN be requested during the first business day following payment.
- (4) Definition of unexpected payment.
- (5) Examples.
- (h) Effective dates.

* * * * *

Par. 3. Section 1.1441-1 is amended by adding paragraph (b)(7)(i)(D) to read as follows:

§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

- (b) * * *
- (7) * * *
- (i) * * *

(D) The withholding agent has complied with the provisions of § 1.1441-6(c) or (g).

* * * * *

§ 1.1441-1T [Removed]

Par. 4. Section 1.1441-1T is removed.

Par. 5. Section 1.1441-6 is amended as follows:

1. The fifth sentence of paragraph (b)(1) is amended by removing the

language “and § 1.1441-6T(h)” and adding “and § 1.1441-6(g)” in its place.

2. Paragraph (g) is redesignated as paragraph (h) and new paragraph (g) is added.

3. Newly designated paragraph (h) section heading is revised.

4. Newly designated paragraph (h)(1) is revised.

5. Newly designated paragraph (h)(2) is amended by removing the language “(g)(2)” and adding “(h)(2)” in its place each place it appears in the third and fourth sentences.

The addition and revisions read as follows:

§ 1.1441-6 Claim of reduced withholding under an income tax treaty.

* * * * *

(g) *Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits—(1) General rule.* Except as provided in paragraph (c) or (g)(2) of this section, for purposes of paragraph (b)(1) of this section, a withholding agent may not rely on a beneficial owner withholding certificate, described in paragraph (b)(1) of this section, that does not include the beneficial owner’s taxpayer identifying number (TIN).

(2) *Special rule.* For purposes of satisfying the TIN requirement of paragraph (b)(1) of this section, a withholding agent may rely on a beneficial owner withholding certificate, described in such paragraph, without regard to the requirement that the withholding certificate include the beneficial owner’s TIN, if—

(i) A withholding agent, who is also an acceptance agent, as defined in § 301.6109-1(d)(3)(iv) of this chapter (the payor), has entered into an acceptance agreement that permits the acceptance agent to request an individual taxpayer identification number (ITIN) on an expedited basis because of the circumstances of payment or unexpected nature of payments required to be made by the payor;

(ii) The payor was required to make an unexpected payment to the beneficial owner who is a foreign individual;

(iii) An ITIN for the beneficial owner cannot be received by the payor from the Internal Revenue Service (IRS) because the IRS is not issuing ITINs at the time of payment or any time prior to the time of payment when the payor has knowledge of the unexpected payment;

(iv) The unexpected payment to the beneficial owner could not be reasonably delayed to permit the payor to obtain an ITIN for the beneficial owner on an expedited basis; and

(v) The payor satisfies the provisions of paragraph (g)(3) of this section.

(3) *Requirement that an ITIN be requested during the first business day following payment.* The payor must submit a beneficial owner payee application for an ITIN (Form W-7 “Application for IRS Individual Taxpayer Identification Number”) that complies with the requirements of § 301.6109-1(d)(3)(ii) of this chapter, and also the certification described in § 301.6109-1(d)(3)(iv)(A)(4) of this chapter, to the IRS during the first business day after payment is made.

(4) *Definition of unexpected payment.* For purposes of this section, an *unexpected payment* is a payment that, because of the nature of the payment or the circumstances in which it is made, could not reasonably have been anticipated by the payor or beneficial owner during a time when the payor or beneficial owner could obtain an ITIN from the IRS. For purposes of this paragraph (g)(4), a payor or beneficial owner will not lack the requisite knowledge of the forthcoming payment solely because the amount of the payment is not fixed.

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

Example 1. G, a citizen and resident of Country Y, a country with which the United States has an income tax treaty that exempts U.S. source gambling winnings from U.S. tax, is visiting the United States for the first time. During his visit, G visits Casino B, a casino that has entered into a special acceptance agent agreement with the IRS that permits Casino B to request an ITIN on an expedited basis. During that visit, on a Sunday, G wins \$5000 in slot machine play at Casino B and requests immediate payment from Casino B. ITINs are not available from the IRS on Sunday and would not again be available until Monday. G, who does not have an individual taxpayer identification number, furnishes a beneficial owner withholding certificate, described in § 1.1441-1(e)(2), to the Casino upon winning at the slot machine. The beneficial owner withholding certificate represents that G is a resident of Country Y (within the meaning of the U.S.—Y tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Y tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for G. On the following Monday, Casino B faxes a completed Form W-7, including the required certification, for G, to the IRS for an expedited ITIN. Pursuant to paragraph (b) and (g)(2) of this section, absent actual knowledge or reason to know otherwise, Casino B, may rely on the documentation furnished by G at the time of payment and pay the \$5000 to G without withholding U.S. tax based on the treaty exemption.

Example 2. The facts are the same as *Example 1*, except G visits Casino B on Monday. G requests payment Monday

afternoon. In order to pay the winnings to G without withholding the 30 percent tax, Casino B must apply for and obtain an ITIN for G because an expedited ITIN is available from the IRS at the time of the \$5000 payment to G.

Example 3. The facts are the same as *Example 1*, except G requests payment fifteen minutes before the time when the IRS begins issuing ITINs. Under these facts, it would be reasonable for Casino B to delay payment to G. Therefore, Casino B must apply for and obtain an ITIN for G if G wishes to claim an exemption from U.S. withholding tax under the U.S.—Y tax treaty at the time of payment.

Example 4. P, a citizen and resident of Country Z, is a lawyer and a well-known expert on real estate transactions. P is scheduled to attend a three-day seminar on complex real estate transactions, as a participant, at University U, a U.S. university, beginning on a Saturday and ending on the following Monday, which is a holiday. University U has entered into a special acceptance agent agreement with the IRS that permits University U to request an ITIN on an expedited basis. Country Z is a country with which the United States has an income tax treaty that exempts certain income earned from the performance of independent personal services from U.S. tax. It is P's first visit to the United States. On Saturday, prior to the start of the seminar, Professor Q, one of the lecturers at the seminar, cancels his lecture. That same day the Dean of University U offers P \$5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, P, who does not have an ITIN, requests payment for her teaching. P furnishes a beneficial owner withholding certificate, described in § 1.1441-1(e)(2), to University U that represents that P is a resident of Country Z (within the meaning of the U.S.—Z tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Z tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for P. On Tuesday, University U faxes a completed Form W-7, including the required certification, for P, to the IRS for an expedited ITIN. Pursuant to paragraph (b) and (g)(2) of this section, absent actual knowledge or reason to know otherwise, University U may rely on the documentation furnished by P and pay \$5000 to P without withholding U.S. tax based on the treaty exemption.

(h) *Effective dates*—(1) *General rule.* This section applies to payments made after December 31, 2000, except for paragraph (g) of this section which applies to payments made after December 31, 2001.

* * * * *

Section 1.1441-6T [Removed]

Par. 6. Section 1.1441-6T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 7. The authority for part 301 continues to read in part as follows:

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

Par. 8. In § 301.6109-1, paragraph (g)(3) is revised to read as follows:

§ 301.6109-1 Identifying numbers.

* * * * *

(g) * * *

(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number, including disclosure of any taxpayer identifying number previously issued to the foreign person, and change of foreign status. This paragraph (g)(3) applies to payments made after December 31, 2001.

* * * * *

§ 301.6109-1T [Removed]

Par. 9. Section 301.6109-1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 13, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02-29494 Filed 11-21-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans-02-022]

RIN 2115-AA97

Safety Zone; Lower Mississippi River, Miles 87.2 to 91.2, Above Head of Passes, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

the Lower Mississippi River beginning at mile 87.2 and ending at mile 91.2, above Head of Passes, extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the weekly upbound and downbound transit of the cruise ship (C/S) CONQUEST beneath the Entergy Corporation power cable located at mile marker 89.2. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or his designated representative.

DATES: This rule is effective from 4:30 a.m. on November 12, 2002 until 8 p.m. on March 2, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP New Orleans-02-022] and are available for inspection or copying at Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, Louisiana, 70112 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Matthew Dooris, Marine Safety Office New Orleans, at (504) 589-4251.

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 a NPRM and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish an NPRM or for publication in the **Federal Register** 30 days prior to the event. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST under the Entergy Corporation power cable, Lower Mississippi River, mile marker 89.2, above Head of Passes, New Orleans, Louisiana.

Background and Purpose

The Captain of the Port New Orleans is establishing a temporary safety zone on the Lower Mississippi River beginning at mile 87.2 and ending at mile 91.2, above Head of Passes, extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential

safety hazards associated with the weekly upbound and downbound transit of the C/S CONQUEST beneath the Entergy Corporation power cable located at mile marker 89.2. The C/S CONQUEST has an air draft of 208 feet and will be homeported at the Julia Street Wharf, Lower Mississippi River, mile marker 95.3, above Head of Passes, New Orleans, Louisiana. The Entergy Corporation power cable is 216.4 feet North American Vertical Datum (NAVD) at the center of the Lower Mississippi River and increases in height to a maximum of 312.7 feet NAVD on the East bank and a maximum of 342.6 feet NAVD on the West bank. As the C/S CONQUEST needs an air gap of 14 feet between it and the cable to prevent arcing, the vessel must maneuver within 600 feet of the East bank or within 700 feet of the West bank to safely transit under the Entergy Corporation power cable. Vessels transiting this area may restrict the maneuverability of the C/S CONQUEST through those safe passage lanes and possibly result in harm to life, damage to the cruise ship, the power cable, or nearby vessels.

The safety zone will be enforced from 4:30 a.m. until 5:30 a.m. and from 5 p.m. until 6 p.m. on November 12, November 15, November 19, November 21, and November 27, 2002. It will also be enforced from 4:30 a.m. until 5:30 a.m. and from 6:30 p.m. until 7:30 p.m. every Sunday between December 1, 2002 and March 2, 2003. Those periods of enforcement are based on the advance cruise schedule for the C/S CONQUEST and are potentially subject to change. Mariners will be advised of the periods the safety zone will be enforced via broadcast notice to mariners. Except as described in this rule, entry into the zone during the announced enforcement periods is prohibited to all vessels unless authorized by the Captain of the Port New Orleans or his designated representative. Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within the safety zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 rule to be so minimal that a full Regulatory

Evaluation under paragraph 10(e) of the regulatory policies procedures of DOT is unnecessary. This regulation will only affect maritime traffic for short periods of time and notifications to the marine community will be made through broadcast notice to mariners. The impact on routine navigation is expected to be minimal as the zone will only be in effect for a few hours each week.

Small Entities

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

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 the Lower Mississippi River from miles 87.2 to 91.2 while the C/S CONQUEST is transiting inbound and outbound. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time each week.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Matthew Dooris, Marine Safety Office New Orleans, at (504) 589-4251.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, so we 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 direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T08-122 is added to read as follows:

§ 165.T08-122 Safety Zone; Lower Mississippi River, Miles 87.2 to 91.2, Above Head of Passes, New Orleans, LA.

(a) *Location.* The following area is a safety zone: the waters of the Lower Mississippi River, above Head of Passes, beginning at mile 87.2 and ending at mile 91.2, extending the entire width of the river.

(b) *Effective date.* This section is effective from 4:30 a.m. on November 12, 2002 until 8 p.m. on March 2, 2003.

(c) *Periods of enforcement.* This rule will be enforced from 4:30 a.m. until 5:30 a.m. and from 5 p.m. until 6 p.m. on November 12, November 15, November 19, November 21, and November 27, 2002. It will also be enforced from 4:30 a.m. until 5:30 a.m. and from 6:30 p.m. until 7:30 p.m. every Sunday between December 1, 2002 and March 2, 2003. Those periods of enforcement are based on the predicted cruise schedule for the C/S CONQUEST and are subject to change. The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, except as described in this rule, entry into this zone is prohibited unless authorized by the Captain of the Port New Orleans or his designated representative.

(2) The Captain of the Port New Orleans will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

(3) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within the safety zone.

(4) Vessels requiring entry into or passage through the zone during the enforcement periods must request permission from the Captain of the Port New Orleans or his designated representative. The Captain of the Port may be contacted via VHF Channel 13 or 16 or by telephone at (504) 589-6261.

(5) All persons and vessels shall comply with the instruction of the Captain of the Port New Orleans and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: November 1, 2002.

R.W. Branch,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 02-29654 Filed 11-21-02; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE061-DE066-1036; FRL-7411-3]

Approval and Promulgation of Air Quality Implementation Plans; Six Control Measures to Meet EPA-Identified Shortfalls in Delaware's One-Hour Ozone Attainment Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision consists of six control measures to meet EPA-identified shortfalls in Delaware's one-hour ozone attainment demonstration. The intended effect of this action is to approve the six control measures.

EFFECTIVE DATE: This final rule is effective on December 23, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 12, 2002 (67 FR 5776), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the Delaware SIP revision for six control measures based on the model rules developed by the Ozone Transport Commission (OTC), to meet EPA-identified attainment shortfalls for the Philadelphia-Wilmington-Trenton nonattainment area and 19 counties within 100 kilometers of the nonattainment area. The six control measures are: (1) Control of volatile organic compound (VOC) emissions from mobile equipment repair and refinishing; (2) control of VOC emissions from solvent cleaning and drying; (3) control of VOC emissions from Architectural and Industrial Maintenance (AIM) coatings; (4) control of VOC emissions from consumer products; (5) control of VOC emissions from portable fuel containers; and (6)

control of nitrogen oxides (NO_x) emissions from industrial boilers. Other specific requirements of the six control measures and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the six control measures submitted on March 1, 2002, as revisions to the Delaware SIP.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (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 or 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 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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 economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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.*).

B. 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 the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 January 21, 2003. 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 pertaining to six control measures to meet EPA-identified shortfalls in Delaware's one-hour ozone attainment demonstration, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 14, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart I—Delaware

2. In Section 52.420, the table in paragraph (c) is amended:

a. Under Regulation 24 by revising the entries for Section 11 and Section 33.

b. By adding a new Regulation 41, including headings, with entries for Section 1, Section 2 and Section 3.

c. By adding a new Regulation 42, including headings, with an entry for Section 1.

The revisions and additions read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *				
Regulation 24	CONTROL OF VOLATILE ORGANIC COMPOUND EMISSIONS			
* * * * *				
Section 11	Mobile Equipment Repair and Refinishing	11/11/01	November 22, 2002, Federal Register page citation.	
* * * * *				
Section 33	Solvent Cleaning and Drying	11/11/01	November 22, 2002, Federal Register page citation.	
* * * * *				
Regulation 41	LIMITING VOC EMISSIONS FROM CONSUMER AND COMMERCIAL PRODUCTS			
Section 1	Architectural and Industrial Maintenance (AIM) Coatings	3/11/02	November 22, 2002, Federal Register page citation.	
Section 2	Commercial Products	1/11/02	November 22, 2002, Federal Register page citation.	
Section 3	Portable Fuel Containers	11/11/01	November 22, 2002, Federal Register page citation.	
Regulations 42	SPECIFIC EMISSION CONTROL REQUIREMENTS			
Section 1	Control of Nitrogen Oxides (NO _x) Emissions from Industrial Boilers.	12/11/01	November 22, 2002, Federal Register page citation.	

* * * * *
 [FR Doc. 02-29605 Filed 11-21-02; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 164-1164a; FRL-7412-4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which pertains to a revision to the solvent metal cleaning rule applicable to the St. Louis area. This revision addresses paint spray gun cleaning solvents and emission controls. Approval of this revision will ensure consistency between the state and federally-approved rules, and ensure Federal enforceability of the revised state rule.

DATES: This direct final rule will be effective January 21, 2003, unless EPA receives adverse comments by December 23, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This section provides additional information by addressing the following questions:

- What is a SIP?
- What is the Federal approval process for a SIP?
- What does Federal approval of a state regulation mean to me?
- What is being addressed in this document?
- Have the requirements for approval of a SIP revision been met?
- What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These

SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Missouri rule 10 CSR 10-5.300, Control of Emissions From Solvent Metal Cleaning, has been revised to allow the use of a higher vapor pressure solvent when used to clean paint spray guns and nozzles. The lower vapor pressure solvent allowed prior to this revision was not effective at removing hardened paint from paint spray guns

and nozzles. The revision also requires that when the higher vapor pressure solvent is used for this purpose, that it be used with closed-top cleaning machines only (as opposed to open-top cleaning machines). Closed-top cleaning machines are more effective at capturing emissions than open-top machines. Sources will still have the option of using the lower vapor pressure solvent with either open-top or closed-top cleaning machines.

The Missouri Department of Natural Resources has estimated that this revision will result in an increase in volatile organic compound emissions of .079 tons per day. This increase will have a negligible impact on modeled ambient air quality in the St. Louis area.

This rule is one of the rules used to meet the requirements for the 15% Rate of Progress (ROP) plan and attainment demonstration plan for the St. Louis nonattainment area. When the emission reductions from this rule were calculated in 1998 for these plans, spray gun cleaning emissions reduction credits were not considered. Thus, this revision will not have any effect on these plans.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Final action: We are approving as a revision to the Missouri SIP revisions to state rule 10 CSR 10-5.300, Control of Emissions From Solvent Metal Cleaning, which has a state effective date of May 30, 2002.

Administrative Requirements

Under Executive Order 12866 (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 or 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 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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 CAA. 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 economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission

that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2003.

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 in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 8, 2002.

James B. Gulliford,
Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 5 by revising the entry for "10-5.300" to read as follows:

§ 52.1320 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
* * * * *				
	Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area			
* * * * *				
10-5.300	Control of Emissions From Solvent Metal Cleaning	5/30/02	...	11/22/02
* * * * *				

* * * * *
[FR Doc. 02-29609 Filed 11-21-02; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 166-1166a; FRL-7412-1]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to Missouri rule

"Submission of Emission Data, Emission Fees, and Process Information." This revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's most recent rule revision.

DATES: This direct final rule will be effective January 21, 2003, unless EPA receives adverse comments by December 23, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public

inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

- What is a SIP?
- What is the Federal approval process for a SIP?
- What does Federal approval of a state regulation mean to me?
- What is the part 70 Operating Permits Program?
- What is being addressed in this document?

Have the requirements for approval of a SIP revision and part 70 program revision been met?

What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by us under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM₁₀; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies operating permits program are also subject to public notice, comment, and our approval.

What Is Being Addressed in This Document?

The state of Missouri has requested that EPA approve as a revision to the Missouri SIP and part 70 Operating Permits Program recently adopted revisions to rule 10 CSR 10-6.110, "Submission of Emission Data, Emission Fees, and Process Information." The rule addresses the

emission reporting requirement of title I of the CAA and the emission fee requirements of title V.

This rule applies to sources that are required to obtain a construction or title V permit, to sources seeking an exemption from major source permitting requirements, and to additional source categories specified in the rule. The rule requires the submittal of an Emission Inventory Questionnaire (EIQ) and payment of emission fees based on information submitted in the EIQ.

Missouri updates this rule annually. The revisions this year were to make the rule applicable to calendar year 2002 emissions by revising the applicability date in section (5)(A) from 2001 to 2002, and to raise the annual emission fee from \$25.70 to \$31.00 per ton. This is the first fee increase since the state began collecting fees in 1994. This fee, along with program cash reserves, is sufficient to fund the cost of administering the part 70 program.

Further discussion and background information is contained in the technical support document prepared for this action, which is available from the EPA contact listed above.

Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revisions meet the substantive SIP requirements of the CAA, including section 110 and 40 CFR 51.211, relating to submission of emissions data. Finally, the submittal meets the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70, including the requirement in 40 CFR 70.9 relating to emission fees.

What Action Is EPA Taking?

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial, and make regulatory revisions required by state statute. Therefore, we do not anticipate any adverse comments.

Final Action: EPA is approving as an amendment to the Missouri SIP revisions to rule 10 CSR 10-6.110, "Submission of Emission Data, Emission Fees, and Process Information" pursuant to section 110. EPA is also approving this rule as a program revision to the state's part 70

Operating Permits Program pursuant to part 70.

Administrative Requirements

Under Executive Order 12866 (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 or 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 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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 CAA. 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 economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by January 21, 2003. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 12, 2002.

James B. Gulliford,
Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for “10-6.110” to read as follows:

§ 52.1320 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
10-6.110	Submission of Emission Data, Emission Fees, and Process Information.	8/30/02	November 22, 2002 [and FR page citation].	Section (5), Emission Fees, has not been approved as part of the SIP.

* * * * *
PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:
Authority: 42 U.S.C. 7401 *et seq.*

Appendix A—[Amended]

2. Appendix A to Part 70 is amended by adding paragraph (m) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *
 Missouri
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(m) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10-6.110, "Submission of Emission Data, Emission Fees, and Process Information" on September 9, 2002, approval effective January 21, 2003.

* * * * *
 [FR Doc. 02-29607 Filed 11-21-02; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS-1809-F2]

RIN 0938-AM21

Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date

AGENCY: Centers for Medicare & Medicaid Services (CMS), DHHS.
ACTION: Final rule; extension of partial delay in effective date.

SUMMARY: This final rule further delays for 6 months, until July 7, 2003, the effective date of the last sentence of 42 CFR 411.354(d)(1). Section 411.354(d)(1) was promulgated in the

final rule entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," published in the **Federal Register** on January 4, 2001 (66 FR 856). A 1-year delay of the effective date of the last sentence in § 411.354(d)(1) was published in the **Federal Register** on December 3, 2001 (66 FR 60154). This extension of the 1-year delay in the effective date of that sentence will give us additional time to reconsider the definition of compensation that is "set in advance" as it relates to percentage compensation methodologies in order to avoid unnecessarily disrupting existing contractual arrangements for physician services. Accordingly, the last sentence of § 411.354(d)(1), which would have become effective January 6, 2003, will not become effective until July 7, 2003. We expect a future final rule with comment period, entitled "Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships" (Phase II), to further address this issue prior to this effective date.

DATES: *Effective date:* The effective date of the last sentence in § 411.354(d)(1) of the final rule published in the **Federal Register** on January 4, 2001 (66 FR 856), is delayed for an additional 6 month period to July 7, 2003.

FOR FURTHER INFORMATION CONTACT:

Karen Raschke, (410) 786-0016.

SUPPLEMENTARY INFORMATION:

Copies: This **Federal Register** document is available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: <http://www.access.gpo.gov/nara/index.html>.

In addition, the information in this final rule will be available soon after publication in the **Federal Register** on our MEDLEARN Web site: <http://cms.hhs.gov/medlearn/refphys.asp>.

I. Background

The final rule, entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With

Which They Have Financial Relationships," published in the **Federal Register** on January 4, 2001 (66 FR 856), interpreted certain provisions of section 1877 of the Social Security Act (the Act). Under section 1877, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not make referrals to that entity for the furnishing of designated health services (DHS) under the Medicare program, and the entity may not bill for the services, unless an exception applies. Many of the statutory and new regulatory exceptions that apply to compensation relationships require that the amount of compensation be "set in advance." Section 411.354(d)(1) of the final rule defines the term "set in advance."

The last sentence of § 411.354(d)(1) reads: "Percentage compensation arrangements do not constitute compensation that is 'set in advance' in which the percentage compensation is based on fluctuating or indeterminate measures or in which the arrangement results in the seller receiving different payment amounts for the same service from the same purchaser." Many of the comments we received regarding the January 4, 2001 physician self-referral final rule indicated that physicians are commonly paid for their professional services using a formula that takes into account a percentage of a fluctuating or indeterminate measure (for example, revenues billed or collected for physician services). According to the commenters, this compensation methodology is frequently used by hospitals, physician group practices, academic medical centers, and medical foundations. Several commenters pointed out that this aspect of the final rule, which is applicable to academic medical centers and medical foundations (among others), is inconsistent with the compensation methods permitted under the statute for many physician group practices and employed physicians (that is, neither section 1877(h)(4)(B)(i) of the Act nor section 1877(e)(2) of the Act contains the "set in advance" requirement). We

understand that hospitals, academic medical centers, medical foundations and other health care entities would have to restructure or renegotiate thousands of physician contracts to comply with the language in § 411.354(d)(1) regarding percentage compensation arrangements.

Accordingly, we published a 1-year delay of the effective date of the last sentence in § 411.354(d)(1) in the **Federal Register** on December 3, 2001 (66 FR 60154) in order to reconsider the definition of compensation that is “set in advance” as it relates to percentage compensation methodologies.

II. Response to Public Comments

In response to the publication of the interim final rule with comment period on December 3, 2001 (66 FR 60154), we received a total of four comments. Because the sole purpose of that interim final rule with comment period was to delay the effective date of the last sentence in § 411.354(d)(1), we only accepted comments addressing the length of the delay of that sentence. The following discussion includes a description of the two pertinent comments that we received, along with our responses.

Comment: Two commenters requested that we further postpone the effective date for an additional year in order to better effectuate our stated goals of providing stability in the health care services available to Medicare beneficiaries, and of avoiding unnecessary disruption of existing contractual arrangements. They were of the opinion that, although the current 1-year delay in effective date may provide us with enough time to publish further guidance, physicians and other health care entities will need additional time to renegotiate reimbursement and compensation arrangements in order to avoid disrupting existing contractual arrangements.

Response: We agree that additional time is necessary, both for us to reconsider this issue, and for health care entities to bring their arrangements into compliance. However, we believe that a further 6-month delay in the effective date will suffice because we expect a future final rule with comment period entitled “Medicare Program; Physicians’ Referrals to Health Care Entities With Which They Have Financial Relationships” (Phase II) to further address this issue prior to this effective date.

III. Provisions of This Final Rule

To avoid any unnecessary disruption to existing contractual arrangements while we consider modifying this

provision, we are further postponing, for an additional 6 months, until July 7, 2003, the effective date of the last sentence of § 411.354(d)(1). This delay is intended to avoid disruptions in the health care industry, and potential attendant problems for Medicare beneficiaries, which could be caused by allowing the last sentence of § 411.354(d)(1) to become effective on January 6, 2003. In the meantime, compensation that is required to be “set in advance” for purposes of compliance with section 1877 of the Act may continue to be based on percentage compensation methodologies, including those in which the compensation is based on a percentage of a fluctuating or indeterminate measure. We note that the remaining provisions of § 411.354(d)(1) will still apply and that all other requirements for exceptions must be satisfied (including, for example, the fair market value and “volume and value” requirements).

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that the notice and comment rulemaking procedure is impracticable, unnecessary, or contrary to the public interest and if the agency incorporates in the rule a statement of such a finding and the reasons supporting that finding.

Our implementation of this action without opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553(b)(B). We find that seeking public comment on this action would be impracticable and unnecessary. We are implementing this additional delay of effective date as a result of our review of the public comments that we received on the January 4, 2001 physician self-referral final rule. As discussed above, we understand from those comments and the comments we received on the December 3, 2001 interim final rule that, unless we further delay the effective date of the last sentence of § 411.354(d)(1), hospitals, academic medical centers, and other entities will have to renegotiate numerous contracts for physician services, potentially causing significant disruption within the health care industry. We are concerned that the disruption could unnecessarily inconvenience Medicare beneficiaries or interfere with their medical care and treatment. We do not believe that it is necessary to offer yet another opportunity for public comment on the same issue in the limited context of whether to delay this sentence of the

regulation. In addition, given the imminence of the January 6, 2003 effective date, we find that seeking public comment on this delay in effective date would be impracticable because it would generate uncertainty regarding an imminent effective date. This uncertainty could cause health care providers to renegotiate thousands of contracts with physicians in an effort to comply with the regulation by January 6, 2003 if the proposed delay is not finalized until after the opportunity for public comment. Thus, providing the opportunity for public comment could result in the very disruption that this delay of effective date is intended to avoid.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: September 27, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 19, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29797 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D005]

Defense Federal Acquisition Regulation Supplement; Foreign Military Sales Customer Involvement

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy regarding the participation of foreign military sales (FMS) customers in the development of contracts that DoD awards on their behalf. The objective is to provide FMS customers with more visibility into the contract pricing and award process.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D005.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule revises DFARS 225.7304 to provide for greater involvement of FMS customers in the contract award process, while protecting against unauthorized disclosure of contractor proprietary data. DoD published a proposed rule at 67 FR 20713 on April 26, 2002. Seven sources submitted comments on the proposed rule. As a result of the public comments, the final rule differs from the proposed rule in that it contains additional language requiring the contracting officer to—

1. Consult with the contractor before making a decision regarding the degree of FMS customer participation in contract negotiations; and

2. Provide an explanation to the FMS customer if its participation in negotiations will be limited.

A discussion of public comments addressing other aspects of the rule is provided below:

Comment: In 225.7304(b), change “FMS customers should be encouraged to participate” to “FMS customers may participate.”

DoD Response: Do not concur. The objective of the rule is to increase transparency for FMS customers. The word “may” does not accurately reflect this objective.

Comment: Revise 225.7304(c) to permit disclosure of proprietary data only “in limited circumstances where the contractor authorizes release of specific data” rather than when “the contractor authorizes its release.”

DoD Response: Do not concur. The language in the final rule adequately protects the rights of the contractor.

Comment: The Defense Security Cooperation Agency should determine the degree of customer participation in contract negotiations, rather than leaving this decision to the sole discretion of the contracting officer.

DoD Response: Do not concur. The contracting officer is responsible for contract negotiations.

Comment: Add language to increase the role of the FMS customer in the supplier selection process.

DoD Response: Do not concur. The FMS customer may suggest additional supply sources for any acquisition. Section 225.7304(e)(1) of the rule specifies that the FMS customer may suggest the inclusion of additional firms in the solicitation process.

Comment: Amend 225.7304(e)(3) to limit FMS customer observation or participation in negotiations involving any cost information, including cost or pricing data.

DoD Response: Do not concur. A major concern is to preclude unnecessary exclusion of FMS customer representatives from negotiations when only top-level pricing information is discussed. There are sufficient protections in the rule for nondisclosure of proprietary information. Participation of the FMS customer in discussions involving information other than cost or pricing data would be at the discretion of the contracting officer, after consultation with the contractor. This DFARS rule implements DoD policy, as set forth in a memorandum of the Deputy Secretary of Defense dated January 9, 2002, Subject: Department of Defense Policy on Foreign Customer Participation in the Letter of Offer and Acceptance and Contracting Development Process, which requires a DFARS deviation only when the negotiations involve cost or pricing data.

Comment: In 225.7304(f), delete the parenthetical “(except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer),” because it appears to encourage untimely modification of the stated requirements.

DoD Response: Do not concur. Section 225.7304(f) of the rule specifically requires timely notice.

Comment: Include additional language regarding requirements for the contracting officer to justify price reasonableness.

DoD Response: Do not concur. Section 225.7304(h) of the rule requires the contracting officer, upon request, to demonstrate the reasonableness of the contract price to the FMS customer. How this demonstration is accomplished should be left to the discretion of the contracting officer.

Comment: In 225.7304(h), delete the word “sufficient” from the phrase requiring the contracting officer to “provide sufficient information to demonstrate the reasonableness of the price...” This term is indefinable in the sense that it is virtually impossible to objectively determine what is “sufficient” information.

DoD Response: Do not concur. The word “sufficient” describes the adequacy of the information to demonstrate the reasonableness of the price. Although the term cannot be objectively defined, DoD does not agree that this establishes a limitless requirement.

Comment: Add language to address U.S. export laws that limit FMS customer participation in the acquisition process.

DoD Response: Do not concur. An approved Letter of Offer and Acceptance constitutes the legal authorization for the export of the defense articles, technical data, or defense services described therein. 22 U.S.C. 2778(b)(2) provides that “* * * no license shall be required for exports or imports made by or for an agency of the United States Government * * * for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.”

Comment: Add language that clarifies the right of foreign auditors to conduct pre-contract award proposal audits and to have access to price negotiation memoranda and business clearance memoranda.

DoD Response: Do not concur. This DFARS rule is not the appropriate place to address the participation of foreign auditors in U.S. acquisitions or the release of price negotiation and business clearance memoranda to them. These topics are more appropriately addressed in the reciprocal procurement agreements with the foreign country.

Comment: Provide an explanation of what constitutes contractor proprietary data and the conditions under which a deviation would be granted for an FMS customer to participate in contract negotiations when cost or pricing data will be discussed.

DoD Response: What constitutes proprietary data is governed by U.S. law. The disclosure of proprietary data is generally controlled by the Trade Secrets Act (18 U.S.C. 1905) and the Freedom of Information Act (5 U.S.C. 552). A deviation to the regulations (for other than statutory requirements) may be granted when necessary to meet the specific needs and requirements of any procurement. Policy pertaining to deviations is provided in FAR Subpart 1.4 and DFARS Subpart 201.4.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final 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 the involvement of FMS customers in contract development should have no significant effect on offerors or contractors, and the rule provides for the protection of contractor proprietary data.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7304 is revised to read as follows:

225.7304 FMS customer involvement.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302-4 provides authority to contract without full and open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR Subpart 6.3.

(b) FMS customers should be encouraged to participate with U.S. Government acquisition personnel in discussions with industry to—

- (1) Develop technical specifications;
- (2) Establish delivery schedules;
- (3) Identify any special warranty provisions or other requirements unique to the FMS customer; and
- (4) Review prices of varying alternatives, quantities, and options needed to make price-performance tradeoffs.

(c) Do not disclose to the FMS customer any data, including cost or pricing data, that is contractor proprietary unless the contractor authorizes its release.

(d) Except as provided in paragraph (e)(3) of this section, the degree of FMS customer participation in contract negotiations is left to the discretion of the contracting officer after consultation with the contractor. The contracting officer shall provide an explanation to the FMS customer if its participation in negotiations will be limited. Factors that may limit FMS customer participation include situations where—

(1) The contract includes requirements for more than one FMS customer;

(2) The contract includes unique U.S. requirements; or

(3) Contractor proprietary data is a subject of negotiations.

(e) Do not allow representatives of the FMS customer to—

(1) Direct the exclusion of certain firms from the solicitation process (they may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Observe or participate in negotiations between the U.S. Government and the contractor involving cost or pricing data, unless a deviation is granted in accordance with Subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer).

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional information concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient information to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This information—

(1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and

(2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

[FR Doc. 02-29468 Filed 11-21-02; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Parts 251 and 252 and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal

Acquisition Regulation Supplement to update activity names and addresses, cross-references, and clause dates.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0311; facsimile (703) 602-0350.

List of Subjects in 48 CFR Parts 251 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 251 and 252 and Appendix G to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 251 and 252 and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

251.102 [Amended]

2. Section 251.102 is amended in paragraph (e) introductory text, in the second sentence, by removing the parenthetical "(f)" and adding in its place "(e)".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

3. Section 252.212-7001 is amended as follows:

a. By revising the clause date to read "(NOV 2002)"; and

b. In paragraph (b), in entries "252.225-7007" and "252.225-7021", by removing "(SEP 2001)" and adding in its place "(OCT 2002)".

4. Appendix G to Chapter 2 is amended by revising Part 2 to read as follows:

Appendix G—Activity Address Numbers

* * * * *

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

DAAA08, B7 Rock Island Arsenal, ATTN: SOSRI-CT, Rock Island, IL 61299-5000
 DAAA09, BA U.S. Army Operations Support Command, ATTN: AMSOS-CCA, 1 Rock Island Arsenal, Rock Island, IL 61299-6000
 DAAA10, 9X Blue Grass Army Depot, Procurement Office, Building S-14, ATTN:

- SMABG-IOO-P, 2091 Kingston Highway, Richmond, KY 40475-5115
- DAAA12, ZM Sierra Army Depot, Building 74, Herlong, CA 96113-5009
- DAAA14, BK Tooele Army Depot, Contracting Office, ATTN: SOSTE-CD, Building 501, Tooele, UT 84074-0839
- DAAA22, BV Watervliet Arsenal, ATTN: SOSWV-IML-P, Building 10, 1 Buffington Street, Watervliet, NY 12189-4000
- DAAA31, GJ McAlester Army Ammunition Plant, ATTN: SOSMC-PC, 1 C Tree Road, McAlester, OK 74501-9002
- DAAA33 U.S. Army Materiel Command, Combat Equipment Group "Afloat, 103 Guidance Road, Goose Creek, SC 29445-6060
- DAAB07, BG U.S. Army Communications-Electronics Command, CECOM Acquisition Center, ATTN: AMSEL-AC, Building 1208, Fort Monmouth, NJ 07703-5008
- DAAB08, 2V U.S. Army Communications-Electronics Command, CECOM Acquisition Center, ATTN: AMSEL-AC, Building 1208, Fort Monmouth, NJ 07703-5008
- DAAB15, BD U.S. Army Communications-Electronics Command, CECOM Acquisition Center Washington, ATTN: AMSEL-AC-W, 2461 Eisenhower Avenue, Alexandria, VA 22331-0700
- DAAB17, ZS U.S. Army Communications-Electronics Command, Tobyhanna Depot Contracting Office, ATTN: AMSEL-TY-KO, 11 Hap Arnold Boulevard, Tobyhanna, PA 18466-5100
- DAAB18, E4 U.S. Army Communications-Electronics Command, Technology Applications Office, ATTN: AMSEL-DSA-TA, 1671 Nelson Street, Fort Detrick, MD 21702-5004
- DAAB32, Y6 U.S. Army Communications-Electronics Command, Southwest Operations Office, ATTN: AMSEL-AC-CC-S, Building 61801, Room 3212, Fort Huachuca, AZ 85613-5000
- DAAD05, BM U.S. Army Robert Morris Acquisition Center, APG Contracting Division, Aberdeen Branch, ATTN: AMSSB-ACC-A, 4118 Susquehanna Avenue, Aberdeen Proving Ground, MD 21005-3013
- DAAD11, B2 U.S. Army Robert Morris Acquisition Center, Denver Contracting Division, ATTN: AMS-ACD, 72nd and Quebec Streets, Commerce City, CO 80022-1748
- DAAD13, ZU U.S. Army Robert Morris Acquisition Center, APG Contracting Division, Edgewood Branch, ATTN: AMSSB-ACC-E, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010-5424
- DAAD15, BB U.S. Army Robert Morris Acquisition Center, Natick Contracting Division, ATTN: AMSSB-ACN-M, Building 1, Kansas Street, Natick, MA 01760-5011
- DAAD16, C5 U.S. Army Robert Morris Acquisition Center, Natick Contracting Division (R&D and BaseOps), ATTN: MSSB-ACN-S, Building 1, Kansas Street, Natick, MA 01760-5011
- DAAD17, 1Y U.S. Army Robert Morris Acquisition Center, Adelphi Contracting Division, ATTN: AMSSB-ACA, 2800 Powder Mill Road, Adelphi, MD 20783-1197
- DAAD19, YU U.S. Army Robert Morris Acquisition Center, Research Triangle Park Contracting Division, ATTN: AMSSB-ACR, PO Box 12211, Research Triangle Park, NC 27709-2211
- DAAD21, B1 U.S. Army Robert Morris Acquisition Center, Pine Bluff Contracting Division, ATTN: AMSSB-ACP, 10020 Kabrich Circle, Pine Bluff, AR 71602-9500
- DAAE07, BR TACOM "Warren, Acquisition Center, ATTN: AMSTA-AQ-AMB, E Eleven Mile Road, Warren, MI 48397-5000
- DAAE08, SF TACOM "Warren, Acquisition Center, ATTN: AMSTA-AQ, E Eleven Mile Road, Warren, MI 48397-5000
- DAAE20, DG TACOM—Rock Island, ATTN: AMSTA-AQ-AR, Rock Island Arsenal, Rock Island, IL 61299-7630
- DAAE24, BH TACOM "Anniston, Directorate of Contracting, ATTN: AMSTA-AN-CT, 7 Frankford Avenue, Building 221, Anniston, AL 36201-4199
- DAAE30, 2T TACOM "Picatinny, Center for Contracting and Commerce, ATTN: AMSTA-AQ-AP, Building 9, Picatinny Arsenal, NJ 07806-5000
- DAAE32, D7 TACOM—Red River, Directorate of Contracting, ATTN: AMSTA-RR-P, 100 Main Drive, Building 431, Texarkana, TX 75507-5000
- DAAG99, ZY U.S. Army Program Manager—SANG, ATTN: AMCPM-NGA, Unit 61304, APO AE 09803-1304
- DAAH01, CC U.S. Army Aviation and Missile Command, ATTN: AMSAM-AC, Building 5303, Martin Road, Redstone Arsenal, AL 35898-5280
- DAAH03, D8 U.S. Army Aviation and Missile Command, ATTN: AMSAM-AC, Building 5303, Martin Road, Redstone Arsenal, AL 35898-5280
- DAAH10, D9 Aviation Applied Technology Directorate, AMCOM RDEC, ATTN: AMSAM-RD-AA-C, Building 401, Lee Boulevard, Fort Eustis, VA 23604-5577
- DAAH12, ZF IAS21WG, AMCOM RDEC, ATTN: AMSAM-TASO-I, Building 401, Lee Boulevard, Fort Eustis, VA 23604-5577
- DAAH13, BJ Corpus Christi Army Depot, ATTN: SIOCC-RS-AQ, 308 Crecy Street, Corpus Christi, TX 78419-6170
- DAAH17, ZN Letterkenny Army Depot, Directorate of Contracting, ATTN: AMSAM-\-LE-KO, 1 Overcash Avenue, Building 2, Chambersburg, PA 17201-4152
- DAAH23, BS U.S. Army Aviation and Missile Command, ATTN: AMSAM-AC, Building 5303, Martin Road, Redstone Arsenal, AL 35898-5280
- DABJ01, 1L ACA, North Region Contracting Center, Building 2798, Fort Eustis, VA 23604-5538
- DABJ03, 2M Capitol Contracting Center, 9410 Jackson Loop, Suite 101, Fort Belvoir, VA 22060-5116
- DABJ05, 1V ACA, Aberdeen Proving Ground, Directorate of Contracting, 4118 Susquehanna Avenue, Aberdeen Proving Ground, MD 21005-3013
- DABJ07, BF ACA, Adelphi, Directorate of Contracting, 2800 Powder Mill Road, Adelphi, MD 20783-1197
- DABJ09, B6 Fort A.P. Hill, Directorate of Contracting, 14136 Burke Road, Fort A.P. Hill, VA 22427-3116
- DABJ11, 2J ACA, Carlisle Barracks, Directorate of Contracting, 314 Lovell Avenue, Suite 1, Carlisle Barracks, PA 17013-5072
- DABJ13, 1C ACA, Fort Carson, Directorate of Contracting, 1850 Mekong Street, Building 6222, Fort Carson, CO 80913-4323
- DABJ15, 2G ACA, Fort Dix, Directorate of Contracting, 5418 South Scott Plaza, Fort Dix, NJ 08640-5097
- DABJ17, 1M ACA, Fort Drum, Directorate of Contracting, 45 West Street, Fort Drum, NY 13602-5220
- DABJ19, BP ACA, Dugway Proving Ground, Division of Contracting, Building 5330, Valdez Circle, Dugway, UT 84022-5000
- DABJ21, 0S Fort Hamilton, Directorate of Contracting, 111 Battery Avenue, Room 115, Brooklyn, NY 11252-5000
- DABJ23, 2F U.S. Army Engineer Center, Directorate of Contracting, PO Box 140, Fort Leonard Wood, MO 65473-0140
- DABJ25, 1T ACA, Fort Lewis, Directorate of Contracting, Building 2015, Box 339500, Fort Lewis, WA 98433-9500
- DABJ27, 1U ACA, Fort McCoy, Directorate of Contracting, Building 2103, 8th Avenue, Fort McCoy, WI 54656-5153
- DABJ29, 0M National Defense University, Directorate of Contracting, 300 5th Avenue, Building 62, Room 203, Fort Lesley J. McNair, DC 20319-5066
- DABJ31, 1J Fort George G. Meade, Directorate of Contracting, 4550 Parade Field Lane, Fort George G. Meade, MD 20755-5081
- DABJ35, 0F Fort Myer Military Community, Building 205, Room 213, 204 Lee Avenue, Fort Myer, VA 22211-1199
- DABJ37, 2Q ACA, Natick, Directorate of Contracting, Building 1, Kansas Street, Natick, MA 01760-5011
- DABJ39, 2T ACA, Picatinny, Directorate of Contracting, Building 9, Picatinny Arsenal, NJ 07806-5000
- DABJ41, 1G ACA, Fort Riley, Directorate of Contracting, PO Box 2248, Fort Riley, KS 66442-0248
- DABJ45, G8 ACA, United States Military Academy, Directorate of Contracting, ATTN: MADC, 681 Hardee Place, West Point, NY 10996-1514
- DABJ47, BN ACA, White Sands Missile Range, Directorate of Contracting, Building 143, Crozier Street, White Sands Missile Range, NM 88002-5201
- DABJ49, B5 ACA, Yuma Proving Ground, Directorate of Contracting, Building 2100, Ocotillo Street, Yuma, AZ 85365-9106
- DABK01, 1E ACA, South Region Contracting Center, 1301 Anderson Way SW, Fort McPherson, GA 30330-1096
- DABK03, 2B ACA, Fort Benning, Directorate of Contracting, Building 6, Meloy Hall, Room 207, Fort Benning, GA 31905-5000
- DABK05, 2L ACA, Fort Bliss, Directorate of Contracting, ATTN: ATZC-DOC, Building 2021, Club Road, Fort Bliss, TX 79916-6812
- DABK07, 1N ACA, Fort Bragg, Installation Business Office—Contracting, Building 1-1333, Armistead & Macomb Street, Fort Bragg, NC 28307-0120
- DABK09, 1H ACA, Fort Campbell, Directorate of Contracting, Building 2174, 13½ & Indiana Streets, Fort Campbell, KY 42223-1100
- DABK11, 2C ACA, Fort Gordon, Directorate of Contracting, 419 B Street, Building

- 29718, 3rd Floor, Fort Gordon, GA 30905-5719
- DABK13, BL ACA, Fort Huachuca, Directorate of Contracting, PO Box 12748, Fort Huachuca, AZ 85670-2748
- DABK15, 1Q ACA, Fort Hood, Directorate of Contracting, 761st Tank Battalion Avenue, Room W103, Fort Hood, TX 76544-5025
- DABK17, ZE ACA, Fort Irwin, Acquisition Command, PO Box 105095, Fort Irwin, CA 92310-5095
- DABK19, 2K ACA, Fort Jackson, Directorate of Contracting, Building 4340, Magruder Street, Fort Jackson, SC 29207-5491
- DABK21, 2E ACA, Fort Knox, Directorate of Contracting, Building 1109, Room 250, Fort Knox, KY 40121-5000
- DABK23, 2A ACA, Fort McClellan, Directorate of Contracting, 291 Jimmy Parks Boulevard, Suite 215, Fort McClellan, AL 36205-5000
- DABK25, G1 ACA, Fort Polk, Directorate of Contracting, PO Drawer 3918, Fort Polk, LA 71459-5000
- DABK27, 0Q ACA, Presidio of Monterey, Directorate of Contracting, ATTN: ATZP-DOC, 1342 Plummer Street, Monterey, CA 93944-3328
- DABK31, F6 ACA, Fort Rucker, Directorate of Contracting, Novosel Street, Building 5700, Room 380, Fort Rucker, AL 36362-5000
- DABK33, F9 ACA, Fort Sam Houston, Directorate of Contracting, 2107 17th Street, Building 4197, Fort Sam Houston, TX 78234-5015
- DABK35, 2H ACA, Fort Sill, Directorate of Contracting, PO Box 33501, Fort Sill, OK 73503-0501
- DABK37, 1D ACA, Fort Stewart, Directorate of Contracting, 1042 William H Wilson Avenue, Suite 219, Fort Stewart, GA 31314-3322
- DABL01, D0 ACA, ITEC4, Directorate of Contracting, 2461 Eisenhower Avenue, Alexandria, VA 22331-0700
- DABL03, E1 ACA, Fort Huachuca, ITEC4 Contracting, Building 61801, Room 3212, Fort Huachuca, AZ 85613-5000
- DABL05, E7 ACA 5th Signal Command, Directorate of Contracting, ATTN: CMR 421, APO, AE 09056-0001
- DABM03, 0L Headquarters, Third U.S. Army/ARCENT, ATTN: AFRD-PARC, 1881 Hardee Avenue SW, Building 363, Fort McPherson, GA 30330-7000
- DABM06, 0P U.S. Army Central Command—Kuwait, ATTN: ARCENT-KU-DOC, Camp Doha, Kuwait, APO, AE 09889-9900
- DABM09, 2D U.S. Army Central Command—Qatar, ATTN: ARCENT-QA-DOC, Doha, Qatar, APO, AE 09898
- DABM13, G0 U.S. Army Central Command—Saudi Arabia, Directorate of Contracting, ATTN: ARCENT-SA, Eskan Village Riyadh, Saudi Arabia, APO, AE 09852
- DABN01, G6 Wiesbaden Contracting Center, ATTN: AEUCC-C, CMR 410, Box 741, APO, AE 09096-0741
- DABN03, G5 RCO Seckenheim, ATTN: AEUCC-S, Unit 29331, APO, AE 09266-0509
- DABN06, F0 RCO Wuerzburg, ATTN: AEUCC-W, Unit 26622, APO, AE 09244-6622
- DABN09, 8X RCO Grafenwoehr, ATTN: AEUCC-G, Unit 28130, APO, AE 09114-8130
- DABN13, 9Q RCO Vicenza, ATTN: AEUCC-I, Unit 31401, Box 33, APO, AE 09630-3326
- DABN16, 9Z RCO Benelux, ATTN: AEUCC-B, PSC 79/BRCC, APO, AE 09714
- DABN43, 0T JCC-Tuzla, ATTN: AEUCC-S3, Unit 29331, APO, AE 09266-0509
- DABN46, G3 JCC-Taszar, ATTN: AEUCC-S3, Unit 29331, APO, AE 09266-0509
- DABN49, G4 JCC-Sarajevo, ATTN: AEUCC-S3, Unit 29331, APO, AE 09266-0509
- DABN53, 2N JCC-Bondsteel, ATTN: AEUCC-S3, Unit 29331, APO, AE 09266-0509
- DABN56, E8 JCC-Camp Able Sentry, ATTN: AEUCC-S3, Unit 29331, APO, AE 09266-0509
- DABN93, Y5 HQ USACCE, ATTN: AEUCC-S3, Unit 29331, APO, AE 09266-0509
- DABP01, F4 HQ, EUSA, Asst Cofs Acquisition Management, ATTN: EAAQ (PARC), Unit 15236, APO, AP 96205-0009
- DABQ01, 1K ACA, Pacific, Office of the Director/PARC, ATTN: SFCA-POH, Building T-115, B Street, Fort Shafter, HI 96858-5100
- DABQ03, 8U ACA, Fort Richardson, Regional Contracting Office, Alaska, ATTN: SFCA-POH-A, PO Box 5-525, Fort Richardson, AK 99505-0525
- DABQ06, CJ ACA, Fort Shafter, Regional Contracting Office, Hawaii, ATTN: SFCA-POH-H, Building 520, Pierce Street, Fort Shafter, HI 96858-5025
- DABR01, Z2 ACA, OPARC, Mission Support Contracting Office, ATTN: Chief of the MSC, PO Box 34000, Fort Buchanan, PR 00934
- DABR03, 1B ACA, Army BaseOps Support Activity, Westside Plaza II, ATTN: SOBO-DC, 8300 NW 33 Street, Suite 110, Miami, FL 33122-1940
- DABR06, 8V U.S. Army South, Directorate of Contracting, ATTN: SOFB-DOC, Building 556, Fort Buchanan, PR 00934-3400
- DABR09, ZC Joint Task Force Bravo, Contracting Office, ATTN: JTF-B-COA, Unit 5720, PSC 42, APO, AA 34042
- DACA01, DACW01, CK U.S. Army Engineer District, Mobile, ATTN: CESAM-CT, PO Box 2288, Mobile, AL 36628-0001
- DACA02, DACW02 U.S. Army Corps of Engineers, ATTN: CEPR-ZA, 441 G Street NW, Washington, DC 20314-1000
- DACA03, DACW03, CL U.S. Army Engineer District, Little Rock, ATTN: CESWL-CT, PO Box 867, Little Rock, AR 72203-0867
- DACA05, DACW05, CM U.S. Army Engineer District, Sacramento, ATTN: CESPK-CT, 1325 J Street, Sacramento, CA 95814-2922
- DACA07, DACW07, CP U.S. Army Engineer District, San Francisco, ATTN: CESP-CT, 333 Market Street, San Francisco, CA 94105-2195
- DACA09, DACW09, CQ U.S. Army Engineer District, Los Angeles, ATTN: CESPL-CT, PO Box 532711, Los Angeles, CA 90053-2325
- DACA17, DACW17, CS U.S. Army Engineer District, Jacksonville, ATTN: CESAJ-CT, PO Box 4970, Jacksonville, FL 32232-0019
- DACA21, DACW21, CV U.S. Army Engineer District, Savannah, ATTN: CESAS-CT, PO Box 889, Savannah, GA 31402-0889
- DACA23, DACW23, CX U.S. Army Engineer District, Chicago, ATTN: CELRC-CT, 111 North Canal Street, Chicago, IL 60606-7206
- DACA25, DACW25, CD U.S. Army Engineer District, Rock Island, Clock Tower Building, ATTN: CEMVR-CT, PO Box 2004, Rock Island, IL 61204-2004
- DACA27, DACW27, CY U.S. Army Engineer District, Louisville, ATTN: CELRL-CT, PO Box 59, Louisville, KY 40201-0059
- DACA29, DACW29, CZ U.S. Army Engineer District, New Orleans, ATTN: CEMVN-CT, PO Box 60267, New Orleans, LA 70160-0267
- DACA31, DACW31, DA U.S. Army Engineer District, Baltimore Contracting Division, ATTN: CENAB-CT, PO Box 1715, Baltimore, MD 21203-1715
- DACA33, DACW33, DB U.S. Army Engineer District, New England, ATTN: CENAE-CT, 696 Virginia Road, Concord, MA 01742-2751
- DACA35, DACW35, DC U.S. Army Engineer District, Detroit, ATTN: CELRE-CT, PO Box 1027, Detroit, MI 48321-1027
- DACA37, DACW37, DD U.S. Army Engineer District, St. Paul, ATTN: CEMVP-CT, 190 Fifth Street East, St. Paul, MN 55101-1638
- DACA38, DACW38, DE U.S. Army Engineer District, Vicksburg, ATTN: CEMVK-CT, 4155 Clay Street, Vicksburg, MS 39183-3435
- DACA41, DACW41, DH U.S. Army Engineer District, Kansas City, ATTN: CENWK-CT, 700 Federal Building, 601 East 12th Street, Kansas City, MO 64106-2896
- DACA42, DACW42, DF Vicksburg Consolidated Contracts Office, ATTN: ERDC, 4155 Clay Street, Vicksburg, MS 39183-3435
- DACA43, DACW43, DJ U.S. Army Engineer District, St. Louis, ATTN: CEMVS-CT, 1222 Spruce Street, St. Louis, MO 63103-2833
- DACA45, DACW45, DK U.S. Army Engineer District, Omaha, ATTN: CENWO-CT, 106 South 15th Street, Omaha, NE 68102-1618
- DACA47, DACW47, DM U.S. Army Engineer District, Albuquerque, ATTN: CESP-CT, 4101 Jefferson Plaza NE, Albuquerque, NM 87109-3435
- DACA49, DACW49, DN U.S. Army Engineer District, Buffalo, ATTN: CELRB-CT, 1776 Niagara Street, Buffalo, NY 14207-3199
- DACA51, DACW51, CE U.S. Army Engineer District, New York, Contracting Division, ATTN: CENAN-CT, 26 Federal Plaza, New York, NY 10278-0090
- DACA54, DACW54, DQ U.S. Army Engineer District, Wilmington, ATTN: CESAW-CT, PO Box 1890, Wilmington, NC 28402-1890
- DACA56, DACW56, DS U.S. Army Engineer District, Tulsa, ATTN: CESWT-CT, 1645 South 101st East Avenue, Tulsa, OK 74128-4609
- DACA57, DACW57, DT U.S. Army Engineer District, Portland, ATTN: GENWP-CT, PO Box 2946, Portland, OR 97208-2946
- DACA59, DACW59, DV U.S. Army Engineer District, Pittsburgh, ATTN: CELRP-CT, 1000 Liberty Avenue, Pittsburgh, PA 15222-4186
- DACA60, DACW60, DW U.S. Army Engineer District, Charleston, ATTN: CESAC-CT, 69-A Hagood Avenue, Charleston, SC 29403-5107
- DACA61, DACW61, CF U.S. Army Engineer District, Philadelphia, Contracting

- Division, ATTN: CENAP-CT, 100 Penn Square East, Wanamaker Building, Philadelphia, PA 19107-3390
- DACA62, DACW62, DX U.S. Army Engineer District, Nashville, ATTN: CELRN-CT, PO Box 1070, Nashville, TN 37202-1070
- DACA63, DACW63, DY U.S. Army Engineer District, Fort Worth, ATTN: CESWF-CT, PO Box 17300, Fort Worth, TX 76102-0300
- DACA64, DACW64, DZ U.S. Army Engineer District, Galveston, ATTN: CESWG-CT, PO Box 1229, Galveston, TX 77553-1229
- DACA65, DACW65, EA U.S. Army Engineer District, Norfolk, ATTN: CENAO-SS-C, 803 Front Street, Norfolk, VA 23510-1096
- DACA66, DACW66, EB U.S. Army Engineer District, Memphis, ATTN: CEMVM-CT, 167 North Main Street, Room B-202, Memphis, TN 38103-1894
- DACA67, DACW67, EC U.S. Army Engineer District, Seattle, ATTN: CENWS-CT, PO Box 3755, Seattle, WA 98124-3755
- DACA68, DACW68, YW U.S. Army Engineer District, Walla Walla, ATTN: CENWW-CT, 201 North 3rd Avenue, Walla Walla, WA 99362-1876
- DACA69, DACW69, CG U.S. Army Engineer District, Huntington, ATTN: CELRH-CT, 502 8th Street, Huntington, WV 25701-2070
- DACA72, DACW72, ZA U.S. Army Humphreys Engineer Center Support Activity, ATTN: CEHEC-CT, 7701 Telegraph Road, Alexandria, VA 22315-3860
- DACA78, DACW78, 9V Transatlantic Programs Center, ATTN: CETAC-CT, 201 Prince Frederick Drive, Winchester, VA 22602-5000
- DACA79, DACW79, 2R U.S. Army Engineer District, Japan, ATTN: CEPOJ-CT, Unit 45010, APO AP 96338-5010
- DACA81, DACW81, CN U.S. Army Engineer District, Far East, ATTN: CEPOF-CT, Unit 15546, APO AP 96205-0610
- DACA83, DACW83, ZH U.S. Army Engineer District, Honolulu, ATTN: CEPOH-CT, Building 230, Fort Shafter, HI 96858-5440
- DACA85, DACW85, ZJ U.S. Army Engineer District, Alaska, ATTN: CEPOA-CT, PO Box 6898, Elemendorf AFB, AK 99506-6898
- DACA87, DACW87, ZW U.S. Army Engineer and Support Center, Huntsville, ATTN: CEHNC-CT, PO Box 1600, Huntsville, AL 35807-4301
- DACA90, DACW90, 2S U.S. Army Engineer District, Europe, ATTN: CENAU-CT, CMR 410, Box 7, APO AE 09096-9401
- DADA08, BT U.S. Army Medical Command, HCAA, Southeast Regional Contracting Office, ATTN: MCAA-SE, 39706 40th Street, Fort Gordon, GA 30905-5650
- DADA09, YY U.S. Army Medical Command, HCAA, Great Plains Regional Contracting Office, ATTN: MCAA-GP, 3851 Roger Brooke, L31-9V, Fort Sam Houston, TX 78234-6200
- DADA10, ZQ U.S. Army Medical Command, HCAA, MEDCOM Contracting Center, ATTN: MCAA-C, Building 4197, 2107 17th Street, Fort Sam Houston, TX 78234-5015
- DADA13, 0W U.S. Army Medical Command, HCAA, Western Regional Contracting Office, ATTN: MCAA-W, 9902 Lincoln Street, Tacoma, WA 98431-1110
- DADA15, 0X U.S. Army Medical Command, HCAA, MEDCOM Contracting Center—North Atlantic, ATTN: MCAA-NA, Building T-20, 6900 Georgia Avenue NW, Washington, DC 20307-5000
- DADA16, 0Y U.S. Army Medical Command, HCAA, Pacific Regional Contracting Office, ATTN: MCAA-P, Building 160, Krukowski Road, Tripler AMC, HI 96859-5000
- DADA19, 8W U.S. Army Medical Command, HCAA, European Regional Contracting Cell, ATTN: MCAA-E, Landstuhl, Germany, APO, AE 09180-3460
- DAHA01, 9B USPFO for Alabama, PO Box 3715, Montgomery, AL 36109-0715
- DAHA02, 0G USPFO for Arizona, 5645 East McDowell Road, Phoenix, AZ 85008-3423
- DAHA03, 9D USPFO for Arkansas, Camp Robinson, North Little Rock, AR 72199-9600
- DAHA04, 9N USPFO for California, PO Box 8104, San Luis Obispo, CA 93403-8104
- DAHA05, Z0 USPFO for Colorado, ATTN: Mail Stop 66, 660 South Aspen Street, Building 1005, Aurora, CO 80011-9551
- DAHA06, 1S USPFO for Connecticut, 360 Broad Street, Hartford, CT 06105-3779
- DAHA07, 9A USPFO for Delaware, Grier Building, 1161 River Road, New Castle, DE 19720-5199
- DAHA08, 2W USPFO for Florida, PO Box 1008, 189 Marine Street, St. Augustine, FL 32085-1008
- DAHA09, 0C USPFO for Georgia, PO Box 17882, Atlanta, GA 30316-0882
- DAHA10, CU USPFO for Idaho, 3489 West Harvard Street, Boise, ID 83705-6512
- DAHA11, 9E USPFO for Illinois, Camp Lincoln, 1301 North MacArthur Boulevard, Springfield, IL 62702-2399
- DAHA12, 4E USPFO for Indiana, 2002 South Holt Road, Indianapolis, IN 46241-4839
- DAHA13, 9L USPFO for Iowa, Camp Dodge, 7700 NW Beaver Drive, Johnston, IA 50131-1902
- DAHA14, 4Z USPFO for Kansas, 2737 South Kansas Avenue, Topeka, KS 66611-1170
- DAHA15, 6P USPFO for Kentucky, Boone National Guard Center, 120 Minuteman Parkway, Building 120, Frankfort, KY 40601-6192
- DAHA16, 0A USPFO for Louisiana, Jackson Barracks, Building 39, New Orleans, LA 70146-0330
- DAHA17, 0B USPFO for Maine, Camp Keyes, Augusta, ME 04333-0032
- DAHA18, 0C USPFO for Maryland, State Military Reservation, 301 Old Bay Lane, Havre de Grace, MD 21078-4094
- DAHA19, 0D USPFO for Massachusetts, 50 Maple Street, Milford, MA 01757-3604
- DAHA20, 9F USPFO for Michigan, 3111 West Saint Joseph Street, Lansing, MI 48913-5102
- DAHA21, 9K USPFO for Minnesota, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345-4173
- DAHA22, CW USPFO for Mississippi, 144 Military Drive, Jackson, MS 39208-8860
- DAHA23, 9H USPFO for Missouri, 7101 Military Circle, Jefferson City, MO 65101-1200
- DAHA24, 9P USPFO for Montana, PO Box 1157, Helena, MT 59624-1157
- DAHA25, 9S USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68508-1092
- DAHA26 USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701-5596
- DAHA27, 9U USPFO for New Hampshire, PO Box 2003, Concord, NH 03302-2003
- DAHA28, ZK USPFO for New Jersey, 3601 Technology Drive, Fort Dix, NJ 08640-7600
- DAHA29 USPFO for New Mexico, 47 Bataan Boulevard, Santa Fe, NM 87508-4695
- DAHA30, D2 USPFO for New York, 330 Old Niskayuna Road, Latham, NY 12110-2224
- DAHA31, D3 USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607-6412
- DAHA32, D6 USPFO for North Dakota, PO Box 5511, Bismarck, ND 58506-5511
- DAHA33, 9M USPFO for Ohio, 2811 West Dublin-Granville Road, Columbus, OH 43235-2788
- DAHA34, 9J USPFO for Oklahoma, 3501 Military Circle, Oklahoma City, OK 73111-4398
- DAHA35, 1X USPFO for Oregon, ATTN: USPFO-P, PO Box 14350, Salem, OR 97309-5047
- DAHA36, DL USPFO for Pennsylvania, Department of Military and Veteran Affairs, Annville, PA 17003-5003
- DAHA37, 9W USPFO for Rhode Island, 330 Camp Street, Providence, RI 02906-1954
- DAHA38, DU USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201-4763
- DAHA39, VQ USPFO for South Dakota, 2823 West Main Street, Rapid City, SD 57702-8186
- DAHA40, YX USPFO for Tennessee, PO Box 40748, Nashville, TN 37204-0748
- DAHA41, 9C USPFO for Texas, ATTN: Contracting Officer, PO Box 5218, Austin, TX 78763-5218
- DAHA42 USPFO for Utah, PO Box 2000, Draper, UT 84020-2000
- DAHA43 USPFO for Vermont, 789 Vermont National Guard Road, Building 3, Colchester, VT 05446-3004
- DAHA44, ZR USPFO for Virginia, Building 316, Fort Pickett, Blackstone, VA 23824-6316
- DAHA45, ZX USPFO for Washington, Building 32, Camp Murray, Tacoma, WA 98430-5170
- DAHA46 USPFO for West Virginia, 50 Armory Road, Buckhannon, WV 26201-8818
- DAHA47, 9G USPFO for Wisconsin, 8 Madison Boulevard, Camp Douglas, WI 54618-5002
- DAHA48 USPFO for Wyoming, 5500 Bishop Boulevard, Cheyenne, WY 82009-3320
- DAHA49 USPFO for the District of Columbia, Anacostia Naval Air Station, 189 Poremba Court SW, Washington, DC 20373-5046
- DAHA50 USPFO for Hawaii, 4208 Diamond Head Road, Honolulu, HI 96816-4495
- DAHA51, 2Z USPFO for Alaska, PO Box B, Camp Denali, Fort Richardson, AK 99505-2610
- DAHA70 USPFO for Puerto Rico, PO Box 34069, Fort Buchanan, PR 00934-4068
- DAHA72 USPFO for Virgin Islands, RR #2, Box 9200, Kinghill, St. Croix, VI 00850-9731
- DAHA74 USPFO for Guam, 622 East Harmon Industrial Park Road, Tamuning, GU 96911-4421
- DAHA90, 2Y National Guard Bureau, Contracting Support, ATTN: NGB-AQC,

1411 Jefferson Davis Highway, Arlington, VA 22202-3231
 DAHA92 National Guard Bureau, Environmental/Air Acquisition Division, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231
 DAHA94 National Guard Bureau, CIO Contracting Office, ATTN: NGB-RCS-BO, 1411 Jefferson Davis Highway, Suite 7200, Arlington, VA 22202-3231
 DAMD17, B3 U.S. Army Medical Research Acquisition Activity, ATTN: MCMR-AAA, 820 Chandler Street, Frederick, MD 21702-5014
 DAMT01, 0E Military Traffic Management Command, ATTN: MTAQ, 200 Stovall Street, Alexandria, VA 22332-5000
 DASC01, YJ HQ USAINSCOM, Directorate of Contracting, ATTN: IAPC-DOC, 8825

Beulah Street, Fort Belvoir, VA 22060-5246
 DASC02, YV National Ground Intelligence Center, ATTN: IANG-LOG, 220 Seventh Street NE, Charlottesville, VA 22902-5396
 DASG60, CB U.S. Army Space and Missile Defense Command, Deputy Commander, ATTN: SMDC-CM-AP, PO Box 1500, Huntsville, AL 35807-3801
 DASG62, CH U.S. Army Space Command, ATTN: SMDC-AR-CM, 350 Vandenberg Street, Peterson AFB, CO 80914-2749
 DASW01, F7 Defense Contracting Command—Washington, ATTN: Special Actions Unit Chief, 5200 Army Pentagon, Room 1D245, Washington, DC 20310-5200
 DASW02, 1W USAVIC/Production Acquisition Division, ATTN: JDHQS-AV-W, 601 North Fairfax Street, Room 334, Alexandria, VA 22314-2007

DATM01, 0R U.S. Army, ATEC Mission Support Contracting Activity, ATTN: CSTE-CA, PO Box Y, Fort Hood, TX 76544-0770

5. Appendix G to Chapter 2 is amended in Part 5 by revising entry "FA4452" to read as follows:

PART 5—AIR FORCE ACTIVITY ADDRESS NUMBERS

* * * * *

FA4452, RL AMC CONF/LGCF, 507 Symington Drive, Room W202, Scott AFB, IL 62225-5015.

* * * * *

[FR Doc. 02-29469 Filed 11-21-02; 8:45 am]

BILLING CODE 5001-08-P

Proposed Rules

Federal Register

Vol. 67, No. 226

Friday, November 22, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AF02

Small Business Size Standards; Job Corps Centers

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

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to establish a \$30 million size standard in average annual receipts for Job Corps Centers activities classified within the "Other Technical and Trade Schools" industry (North American Industry Classification System code 611519). The current size standard for all activities within this industry is \$6 million in average annual receipts.

DATES: Comments must be received on or before December 23, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416; via email to SIZESTANDARDS@sba.gov, or via facsimile at (202) 205-6930. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205-6618.

SUPPLEMENTARY INFORMATION: SBA has received requests from the U.S. Department of Labor (DOL) and three other organizations to review the size standard used for Federal Job Corps Center contracts. DOL operates most Job Corps Centers through private sector companies. DOL had classified its Job Corps Centers contracts under the Facilities Support Services industry, NAICS code 561210, and applied the previous Base Maintenance size standard of \$20 million in average annual receipts (as defined in 13 CFR 121.401). A potential offeror on a recent solicitation appealed this NAICS designation to SBA's Office of Hearings and Appeals (OHA). OHA rendered a

decision that the Job Corps Center contract was not properly classified under the Base Maintenance sub-category of Facilities Support Services. (See NAICS Appeal of Global Solutions Network, Inc., SBA No. NAICS-4478, dated March 5, 2002.) For the appealed requirement, OHA determined that the proper classification for an activity that trains individuals in life skills and readies them for the job market through academic studies and/or technical training is Other Technical and Trade Schools, NAICS code 611519. The effect of this decision was to change the size standard for Job Corps Center contracts from \$20 million to \$5 million. (On February 22, 2002, an inflation adjustment increased the \$5 million size standard for NAICS 611519 to \$6 million and the \$20 million size standard for Base Maintenance to \$23 million. See 67 FR 3041, dated January 23, 2002.)

According to DOL, Job Corps Center contracts account for more than \$900 million annually in contracting and represent about 60 percent of DOL's procurement expenditures. SBA agreed to review the size standard for Job Corps Centers because of the large amount of contracting in one specific activity and the significant change in the size standard resulting from the OHA decision. Based on our review, this rule proposes to establish a \$30 million size standard specifically for DOL Job Corp Center contracts. The discussion below describes SBA's general methodology for reviewing size standards, the basis for creating an industry sub-category of Job Corps Centers, the data obtained on Job Corp Center contracts and on the bidders to these contracts, the analysis leading to the decision to propose \$30 million, and the alternative size standards considered by SBA.

Size Standards Methodology: Congress granted SBA discretion to establish detailed size standards (15 U.S.C. 632(a)(2)). SBA's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program" (available on SBA's Web site at <http://www.sba.gov/library/soprooom.html>) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3)

whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors, including the impact on other agencies' programs, may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: Section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)), requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics. SBA has two "base" or "anchor" size standards that apply to most industries—500 employees for manufacturing industries and \$6 million in average annual receipts for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a \$1 million average annual receipts size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries was adjusted periodically for inflation so that, currently, the anchor size standard \$6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than the "typical industry."

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping.

If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is

considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group's characteristics, the larger the difference between the appropriate industry size standard and the anchor size standard. SBA will consider adopting a size standard below the anchor size standard only when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry under review.

The primary evaluation factors that SBA considers in analyzing the structural characteristics of an industry are listed in 13 CFR 121.102 (a) and (b). Those factors include average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs as an evaluation factor. SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. Average firm size is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry is significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. The distribution of firms by size examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's

economic activity is by smaller firms, this tends to support adopting the anchor size standard. A size standard higher than the anchor size standard is supportable for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, SBA is comparing the size of firms within an industry to the size of firms in the comparison group at which predetermined percentages of receipts are generated by firms smaller than a particular size firm. For example, assume for the industry under review that 50 percent of total industry receipts are generated by firms of \$28.5 million in receipts and less. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of \$6 million) in which firms of \$5.8 million and less in receipts generated 50 percent of total industry receipts. Viewed in isolation, the higher figure for the industry under review suggests that a size standard higher than the nonmanufacturing anchor size standard may be warranted. Other size distribution comparisons in the industry analysis include 40 percent, 60 percent, and 70 percent, as well as the 50 percent comparison discussed above. Usually, SBA uses information based on the most recent economic census conducted by the Department of Commerce's Bureau of the Census. However, Job Corps Centers are germane to the Federal government and involve approximately 35 organizations and firms from various industries. Information specific to Job Corps Centers under NAICS code 611519 is not reflected in the latest census data. Therefore, SBA gathered pertinent data on the various firms in this industry, which it will use along with the Census data.

3. Start-up costs affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into one industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, SBA uses a proxy measure to assess the financial burden for entry-level firms. For this analysis, SBA has calculated nonpayroll costs per establishment for each industry. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs,

overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs, which would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed a significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. Industry competition is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compares the proportion of industry receipts generated by the four largest firms in the industry generally referred to as the "four-firm concentration ratio" with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard in order to assist firms in a broader size range to compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40 percent for an industry under review, while its comparison groups also average less than 40 percent.

5. "Impact of size standard revisions on SBA programs" refers to the possible impact a size standard change may have on the level of small business assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

Another factor to evaluate the impact of a proposed size standard on SBA programs is the volume of guaranteed loans within an industry and the size of firms obtaining those loans. This factor is sometimes examined to assess whether the current size standard may

be restricting the level of financial assistance to firms in that industry. If small businesses receive significant amounts of assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially if it is already above the anchor size standard) may not be necessary.

Establishing a Job Corps Centers Sub-Industry Category

The Other Technical and Trade Schools industry which OHA designated for Job Corps Center contracts comprises establishments primarily engaged in offering job or career vocational or technical courses that are not specifically designated under NAICS as industries in their own right. The curriculums offered by these schools are highly structured and specialized and lead to job-specific certification. Examples of these schools include truck driving schools, bartending schools, and graphic arts schools. These schools tend to offer trade specific training and certification, and are usually small. More than 95 percent of these firms have revenues at or below \$6 million.

The DOL's Job Corps Centers, on the other hand, go beyond trade certification programs. Job Corps is a residential education and training program that helps students between the ages of 16 and 24 gain the experience they need to get a better job and take control of their lives. The mission is to prepare economically disadvantaged youth to obtain and hold gainful employment, pursue further education or training, or satisfy entrance requirements for careers in the Armed Forces. The centers provide comprehensive life skills training, comprehensive career preparation and development services which include academic, vocational, social and independent living skills, and career-readiness training and support services. The centers offer college preparatory training, military entrance training, career transition activities, and training and certification in a trade. Basic life-skills training include basic reading and math skills, English as a second language, dietary, dental, basic health, personal hygiene, as well as job life skills. The centers provide academic training that will lead to a high school diploma or equivalent and conduct training in computer skills, resume development, interview skills, and career development. Besides providing teachers for these requirements, several centers have agreements with local high schools as well as local community

colleges. Centers also prepare interested participants for military service exams, and train students in various trades, including plumbing, carpentry, culinary arts, auto-mechanic, electrician, facilities maintenance, landscaping, brick masonry, etc. The Job Corps contractors are required to provide outreach activities and also to maintain the facility, purchase any equipment needed in the teaching of a trade (outfitting kitchens for culinary studies, purchasing heavy machinery for mechanical and automotive trades, etc.), provide medical and dental facilities, and perform admission physicals which include drug and alcohol abuse screening.

The significantly broader scope of activities performed by Job Corps Center contractors as compared with the activities of all other trade schools within its industry supports a separate assessment of an appropriate size standard. Job Corps Centers are larger than the typical trade school, with an average yearly funding of \$8.8 million for one center (yearly funding for each center ranges from \$5 million to over \$44 million). The average size trade school in NAICS 611519 is less than one million dollars.

Because the performance of Job Corps Center contracts is a segment of the Other Technical and Trade Schools industry, SBA's proposal includes a footnote to the table of size standards defining the activities covered. It explains that contracts for Job Corps Centers require the complete maintenance and operation of the centers. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. SBA invites comment on this definition so that it accurately depicts the scope of activities currently performed by Job Corps Center contractors.

Industry Data on Job Corp Centers

The U.S. Bureau of the Census does not published specific data on firms engaged in the operation and management of Job Corps Centers. Also, companies that perform and compete for these Job Corp Center contracts operate primarily in industries outside of the Other Technical and Trade Schools industry. To assess a size standard for the operation and maintenance of Job Corps Centers, SBA collected contract and company data from DOL and Dun

and Bradstreet (D&B). Tables 1-3 summarize these data.

SBA collected fiscal years 2000-01 data from the DOL on organizations who have contracts or who have submitted proposals on Job Corps Center requirements, and used information provided on D&B Information Reports on these organizations. A review of those organizations shows the following information. There are approximately 35 organizations in this activity. The organizations include for-profit businesses, the YWCA, businesses owned by Native American tribes and nations, and several non-profit establishments. There are 21 organizations currently under contract with DOL to operate Job Corps Centers. According to D&B reports, these organizations are in the following industries: Management of youth facilities, vocational rehabilitation, facilities maintenance, home health care services, human resource counseling, management consulting, and information retrieval. Seven organizations were awarded contracts under Small Business Set-Aside procedures with the contracting officer using the appealed NAICS code of 561210 and the previous Base Maintenance size standard of \$20 million. Five of the organizations in this activity have receipts below \$6 million, but only one of these currently has a Job Corps Center contract. In addition, D&B information shows that four of the five organizations have receipts below \$1 million. These firms are in the following industries: temporary help services, construction, investigation services, and engineering and technical services.

Twenty six of the 35 organizations are listed with D&B. Two non-profit organizations do not have receipts and employees listed on their D&B reports, therefore, SBA has relevant information on 24 organizations. D&B reports on eight organizations show the number of employees but lacked information on those firms' receipts. For these eight organizations, SBA estimated their receipts based organizations in similar industries with similar employee counts.

SBA calculated the average characteristics of the 24 Job Corp Center organizations that provided D&B with receipt and employee information. Table 1 shows the mean and median values of these organizations. Because of the small number of organizations competing for Job Corps Center contracts, the mean values are inordinately influenced by a few very large firms. The median values are considered more reflective of the average characteristics of Job Corps

Center firms and are used in the analysis of industry structure discussed later in this rule.

TABLE 1.—INDUSTRY CHARACTERISTICS OF THE JOB CORPS CENTER ACTIVITY

Category	Mean		Median	
	Receipts (millions)	Employees	Receipts (millions)	Employees
Job Corps Center	\$75.3	1,820	\$30.0	400

Tables 2 and 3 examine the distribution of firms in relation to receipts and number of employees. In addition, Table 2 contains information on the percentage distribution of Job Corps Center contract dollars by receipts size of the firm.

TABLE 2.—RECEIPTS DISTRIBUTION AND PERCENTAGE OF CONTRACT DOLLARS FOR JOB CORPS CENTER ACTIVITY

Receipts (in millions)	Number of firms/organizations	Percent of total job corps center contract dollars
\$100 and over	3	52
\$50–\$99,999	7	28
\$30–\$49,999	2	7
\$20–\$29,999	2	2
\$10–\$19,999	4	5
\$6–\$9,999	1	1
Below \$6	5	1
Undetermined	13	4

¹ Two organizations with Job Corps Center contracts are listed with D&B, but provided no receipt and employee information. One non-profit organization with a Job Corps Center contract is not listed with Dun and Bradstreet.

TABLE 3.—EMPLOYEE DISTRIBUTION FOR JOB CORPS CENTER ACTIVITY

Employees	Number of firms and organizations
Over 2,500	1
1,000–2,499	5
500–999	5
250–499	5
150–249	4
0–149	4
Undetermined	13

¹ Two organizations with contracts are listed with D&B, but provided no receipt and employee information. One non-profit organization with a Job Corps Center contract is not listed with Dun and Bradstreet.

Evaluation of Size Standard for the Job Corps Center Sub-industry: Tables 4 and 5 below show the characteristics of the Job Corp Centers sub-industry and for two comparison groups. The first comparison group is comprised of all industries with a \$6 million receipts-based size standard, referred to as the nonmanufacturing anchor group. Since SBA assumes that the \$6 million anchor size standard is appropriate for a nonmanufacturing industry, this is the most logical set of industries to group together for the industry analysis to assess whether a size standard at the anchor size standard or higher is appropriate. The second comparison group consists of nonmanufacturing industries which have the highest levels of receipt-based size standards

established by SBA, referred to as the nonmanufacturing higher-level size standard group. Size standards for these industries range from \$21 million to \$29 million. If an industry's characteristics are significantly larger than those of the nonmanufacturing anchor group, SBA will compare them to characteristics of the higher-level size standards group. By doing so, SBA can assess if a size standard among its highest receipts-based size standards is appropriate or an intermediate size standard between the anchor size standard and the range of higher size standards.

SBA examined economic data on the comparison group industries taken from a special tabulation of the 1997 Economic Census prepared under contract by the U.S. Bureau of the

Census (Census). Data on Job Corps Centers contracts, contractors, and bidders were obtained from DOL and D&B, as described earlier. *Industry Structure Consideration:* Table 4 below examines the size distribution of firms. For this factor, SBA is evaluating the cumulative size of firm that account for predetermined percentages of total industry receipts (40 percent, 50 percent, 60 percent, and 70 percent). The table shows firms up to a specific size that, along with all other smaller firms, account for a specific percentage of total industry receipts. For the Job Corps Center bidders, the percentages reflect the value of awarded Job Corps Center contracts.

TABLE 4.—SIZE DISTRIBUTION OF FIRMS IN THE JOB CORPS CENTER SUB-INDUSTRY, NONMANUFACTURING ANCHOR GROUP AND HIGHER-LEVEL SIZE STANDARD GROUP

[Data in millions of dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Job Corps Centers Bidders	\$54.5	\$68.6	\$900.0	\$900.0
Nonmanufacturing Anchor Group	\$3.2	\$5.8	\$11.8	\$28.0
Higher-level Size Standards Group	\$24.2	\$50.4	\$135.6	\$423.6

These data support a size standard significantly higher than \$6 million for the Job Corps Centers industry. At a given coverage level the size of firms in the Job Corps Centers industry is substantially larger than in the two comparison groups. In relation to the nonmanufacturing anchor group, the Job Corp Center firms are 18 to 32 times

larger, and almost double that of the higher-level size standard. Because the size distribution of Job Corps Centers firms is significantly higher than that of the nonmanufacturing anchor group, the analysis of this factor supports a size standard significantly above the \$6 million nonmanufacturing anchor size standard and at or beyond the size

standards of the higher-level size standard group.

Table 5 lists the two other evaluation factors of average firm size and the four-firm concentration ratio for the Job Corps Centers sub-industry and the comparison groups.

TABLE 5.—INDUSTRY CHARACTERISTICS OF THE JOB CORPS CENTER INDUSTRY, NONMANUFACTURING ANCHOR GROUP, AND HIGHER-LEVEL SIZE STANDARDS GROUP

Category	Average firm size		Four firm concentration ratio (percent)
	Receipts (millions)	Employees	
Job Corp Center Bidders	\$30.0	400	50.0
Nonmanufacturing Anchor Group	\$0.95	10.6	14.4
Higher-level Size Standards Group	\$4.6	21.4	26.7

For Job Corps Centers, its average firm size in receipts is over 30 times larger than the average firm size in the nonmanufacturing anchor group and approximately six and one half times that of the higher-level size standards group. Moreover, its average firm size in employees is 19 to 37 times the average sizes of these two comparison groups. This factor is substantially higher than the comparison groups and supports a size standard far above \$6 million. Because the size distribution of Job Corps Centers firms is significantly higher than that higher-level size standard group, this factor supports a size standard at or beyond the range of \$21 million to \$29 million.

The four-firm concentration ratio for Job Corps Center firms is about double that of the higher-level size standards group. This factor supports a size standard at least within the range of the higher-level size standards group.

The start-up costs evaluation factor is not analyzed since no data are not available for Job Corp Centers. However, the following discussion of program considerations addresses the issue of size of contract which indirectly relates to the start-up costs associated with Job Corps Centers.

SBA Program Considerations: SBA is proposing this rule to establish a size

standard specifically for DOL's Job Corps Centers contracts. SBA's loan programs will be minimally affected as organizations participating in the Job Corps Centers primarily operate in other industries, namely facility support services, general construction, and home health care services.

SBA extensively reviewed the scope of Job Corp Centers and the organizations bidding on and winning these contracts. Since the beginning of the Job Corps Centers program, the Federal Government has relied on the private sector for the operation of most of these centers or parts of the centers. Since the inception of the Job Corps Centers program, DOL has contracted out the entire operation and maintenance of a facility. A Job Corps Center contract requires an organization to provide teachers, counselors, administrators and support personnel, outreach activities, medical and dental facilities; and perform admissions physicals, maintain the facility, and purchase any equipment needed in the teaching of a trade. Over the years the Job Corps program has developed many public-private partnerships with various trade unions, corporations, and organizations. Many trade unions provide teachers and provide opportunities for the participants to

apprentice with master tradesmen. Because the mission of these centers prepares students for the job market, many of the functions of the centers are integrated as a teaching tool for the students. As an example, students interested in culinary arts studies will work in the cafeteria alongside chefs, or a student interested in learning the plumbing trade will work with the maintenance crews, gaining "hands-on" experience. This approach has been extremely successful in achieving the mission and goals of the Job Corps Center program.

DOL operates 118 Job Corps Centers, of which 88 centers are run by the private sector. All but two of these centers are residential where students are housed. Several centers operate as advanced centers. For example, the San Francisco center runs an advanced culinary institute that prepares participants with skills beyond the high school level. The yearly funding in fiscal year 2001 for these centers ranged from \$5 million to more than \$44 million for their residential centers, with an average yearly funding amounting to \$8.8 million per year per center. Non-residential center contracts range from \$4 million to more than \$6 million.

Procurement statistics show that in fiscal year 2001, DOL expended \$909.5 million in Job Corps Center contracts. There are 21 organizations currently under contract with DOL to operate Job Corps Centers. Seven firms were awarded their contracts under Small Business Set-Aside procedures. (For these set-aside contracts, DOL used the appealed NAICS code of 561210 and applied the previous \$20 million size standard for Base Maintenance). These small businesses account for 6 percent of total Job Corps Center contract dollars.

The analysis of Job Corps Center contracts indicates that a size standard

of \$6 million inadequately identifies the smaller segment of organizations competing for and obtaining these types of contracts. A size standard of at least equal to the current Base Maintenance size standard of \$23 million represents a more realistic and effective size standard. The size of winning contractors and the average size of Job Corps Center contracts support this assessment.

As discussed above, there are 21 organizations performing 88 Job Corps Center contracts. Table 6 below summarizes the size of the awardees and bidders on these contracts. Only one of the successful organizations has

receipts below \$6 million. This organization's contract is for \$5.8 million per year. With a contract that is yearly funded just below the current \$6 million size standard, this organization will probably outgrow the size standard by the end of its next fiscal year, potentially leaving no currently defined small Job Corps Center contractor eligible for future small business asides. Of four other organizations under \$6 million in receipts competing for Job Corps Center contracts, none have been successful offerors.

TABLE 6.—BREAKDOWN ON FIRMS AND ORGANIZATIONS INVOLVED IN JOB CORPS CENTER ACTIVITY

	Number of firms	Industries
Firms and organizations involved or interested in Job Corps Center Activity.	35	
Firms and organizations with Job Corps Center contracts	21	Industries: tribal business, management of youth facilities, vocational rehabilitation, facilities maintenance, home-health care services, human resource counseling, management consulting, and information retrieval.
Firms under \$23 million	11	
Firms under \$23 million with Job Corps Center Contracts	7	
Firms under \$6 million	5	
Firms under \$6 million with Job Corps Center contracts	1	
Firms with revenues under \$1 million (none have Job Corps Center contracts).	4	Industries: Temporary help services, construction, investigation services, and engineering and technical services.

Table 2 above shows that 80 percent of the value of Job Corps Center contracts were awarded to organization with receipts of \$50 million or more. All of the awards to small business were made as set-aside awards. Only one percent of Job Corps Center contract dollars go to small businesses using a \$6 million size standard. In addition, 49 percent of contract dollars were expended with firms and organizations that have over \$100 million in receipts. This shows that a significant proportion of economic activity within the Job Corps Centers industry is concentrated among a few relatively large organizations.

Tables 7 and 8 below illustrate that firms that have been successful in winning Job Corps Center contracts are concentrated in industries that have size standards significantly greater than \$6 million, such as general construction, facilities maintenance services, and home health care services. These observations provide further evidence that a size standard greater than \$6 million is needed to attract the type of firms capable of performing the broad range of activities of Job Corp Centers.

TABLE 7.—LISTING OF PRIMARY INDUSTRIES OF JOB CORPS CENTER CONTRACTORS

Primary industry	Size standard (million)
General Construction	\$28.5
Facilities Maintenance Services	\$23.0
Home Health Care Services	\$11.5
Vocational Schools	\$6.0

TABLE 8.—LISTING OF PRIMARY INDUSTRIES FOR FIRMS THAT HAVE SUBMITTED PROPOSALS AGAINST JOB CORPS CENTER SOLICITATIONS BUT HAVE NOT WON JOB CORPS CENTER CONTRACTS

Primary industry	Size standard (million)
Supply Services	\$6.0
Investigation Services	\$10.5
Engineering and Technical Services	\$4.0
	\$6.0
Behavioral Health Services	\$6.0

The size of Job Corps Centers contracts explains to a great extent the pattern of awards by size of contractor.

For an organization to perform on the average Job Corps Center contract of \$8.8 million, it generally must be at least several times that size. Under the current \$6 million size standard, if an organization receives an award for just one center, it is close to or over the current \$6 million size standard. Those organizations under the current size standard would probably go over \$6 million in receipts within a year if they receive any other substantial business. Thus, with a \$6 million size standard, the opportunities for small businesses in this activity are severely limited.

Additionally, firms with receipts over \$23 million currently handle from four to 22 Job Corps Centers. On average, they operate nine centers. Small businesses must be able to successfully compete with these large organizations, therefore, the size standard needs to be set at a threshold where these businesses can reach a competitive level. In discussions with DOL, an organization can achieve meaningful economies of scale by operating three to four centers. The total operational costs of three centers are \$26.4 million (based on an average cost of \$8.8 million per center), and indicates support of a size standard at that level as a viable alternative to the \$6 million level.

Overview: Based on a review of each evaluation factor, SBA is proposing a \$30 million size standard for Job Corps Centers. All of the factors support a size standard comparable to those of the nonmanufacturing higher-level size standard group, which ranges between \$21 million to \$29 million. Most factors support even a higher size standard. A \$30 million size standard takes into consideration that a Job Corps Center organization achieves economics of scales operating three to four centers. This suggests a size standard of \$26.4 million or more. Since organizations involved with Job Corps Center contracts have other operations, SBA also needs to take that fact into account in establishing a size standard for Job Corps Centers. A \$30 million size standard provides small businesses the ability to compete and grow at an appropriate level without losing their small business status, but not to a level where a few firms would be able to control a significant portion of Federal contracts at the expense of other small businesses.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that no organization at or below the proposed size standard in the Job Corps Centers activities would be of a sufficient size to dominate its field of operation. For Job Corps Centers, an organization with \$30 million in receipts could obtain about three percent of the total dollar value of Job Corps Center contracts. This level of market share effectively precludes an organization at or below the proposed size standard to exert a controlling effect on Job Corps Center contracts.

Alternative Size Standards: SBA concluded that a single size standard of \$6 million was inadequate to define small businesses in the entire Other Technical and Trade Schools industry. The size standard would be too low for Job Corps Centers or too high for all other industry activities, such as job

training facilities, marine navigation schools, and truck driving schools. Establishing two size standards for these industries would enable SBA to determine the most appropriate size standard for disparate segments of the industry.

SBA considered restoring the \$20 million size standard for Job Corps Centers previously applied by DOL. After reviewing the industry data, in particular procurement data, which show the average Job Corp Center contract is for \$8.8 million, SBA concluded that a \$20 million size standard would not be adequate for Job Corps Centers. The adoption of this size standard would allow a firm to receive only two Job Corps Center contracts and be at risk of outgrowing its small business status before reaching sufficient economies to be competitive against the larger incumbent Job Corps Center contractors. Therefore, SBA decided against a \$20 million size standard for Job Corps Centers since it would not allow sufficient growth and business development.

SBA welcomes public comments on its proposed size standard for Job Corps Centers. SBA is concerned with how the proposed size standards may negatively impact those qualified under the current size standard. Comments supporting an alternative to the proposal, including the \$20 million, or the option of retaining the size standard at \$6 million discussed above, should explain why the alternative would be preferable to the proposed size standard, and how the alternative impacts current small businesses.

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

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

in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a size standard for Job Corps Centers is needed to better define small businesses engaged in these activities.

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

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, approximately 10 additional firms will obtain small business status and become eligible for these programs. These include Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those for contracts awarded through full and open competition after application of the HUBZone or SDB price evaluation preference or adjustment. They may also become eligible for SBA financial assistance programs. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses sufficient to evaluate the impact of size standards changes. However, in cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (*see* 13 CFR 121.801). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level

would accrue to three groups: (1) Businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs, (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards, and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses may benefit from SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. Under this program SBA estimates that \$700,000 in new Federal loan guarantees could be made to the newly defined small businesses. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard to include 10 additional businesses may result in only one or two small business guaranteed loans to businesses in this industry. As a guaranteed loan for larger firms averages \$350,000 for firms in the Other Technical and Trade Schools industry and the Facilities Support Services industry, if two of the 10 business applied for a loan, SBA could expect to guarantee \$700,000 in loans. However, most firms involved in Job Corps Centers are in other industries; thus their eligibility for SBA loan assistance would be under their primary NAICS industry. The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth \$53 million per year under the small business set-aside program, the 8(a) and HUBZone Programs, or unrestricted contracts. Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A larger base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Other than small businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost

savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that approximately 10 additional firms could become active in Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net small business database. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. With greater numbers of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone Programs only if awards are expected to be made at fair and reasonable prices. In addition, the use of small business set-asides may encourage more competitors since small businesses would not have to compete against the major businesses in the industry.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to SDB or HUBZone businesses instead of large businesses

since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. As currently there is only one small business that has a contract for a Job Corps Center, this transfer will be offset by initiating a number of Federal procurements than can now be set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers could result in up to \$53 million or 5.8 percent of total contract dollars of \$909 million being transferred from large businesses to small businesses. SBA based this estimate on the per year funding of the firms that currently have Job Corps Center contracts, which would gain small business status if this proposed rule is adopted.

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

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities engaged in Job Corps Center activities. As described in the above Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses interested in competing for Federal Job Corps Centers procurements reserved for small businesses, and SDB and HUBZone businesses eligible for price preferences, may face greater competition from

newly eligible small businesses. Second, additional Federal procurements for the operation and management of Job Corps Centers may be set aside for small business as the pool of eligible small businesses expands. As discussed in the preamble, SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth \$53 million.

As Job Corps Center activity is limited to Federal procurements within DOL, SBA cannot guarantee that the proposed size standard will affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. For this particular proposed rule, SBA did consult with DOL regarding a possible increase to the Job Corps Centers size standard. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule on the Job Corps Centers industry addressing the following questions: (1) what is the need for and objective of the rule; (2) what is SBA's description and estimate of the number of small entities to which the rule will apply; (3) what is the projected reporting, record keeping, and other compliance requirements of the rule; (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

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

A separate size standard for Job Corps Centers more appropriately defines the size of businesses in this industry activity that SBA believes should be eligible for Federal small business assistance programs. Currently, there are five firms in the Job Corps Centers activity that have revenues below \$6 million size standard, however, only one of these firms has a contract for a Job Corps Center. This firm is likely to outgrow the current size standard within the next year as its current

contract is for \$5.8 million per year. This will leave only four firms below the size standard, all having revenues below \$1 million. None of these firms have been successful in winning a Job Corps Center contract. This, along with the facts that the average contract funding is \$8.8 million and the minimal funding for a Job Corps Center is \$5 million for a residential center and \$4 million for a non-residential center, indicates that the size standard for Job Corps Centers needs to be greater than the current \$6 million.

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

SBA estimates that 35 organizations are engaged in the Job Corps Center industry, of which approximately 14 percent are small businesses currently at or just below the \$6 million threshold. If this rule were adopted, 10 additional businesses would be considered small. Although this may not represent a substantial number of small businesses, SBA is preparing an IRFA to ensure that the impact on small businesses of higher size standards are known and being considered. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these firms and SBA's knowledge of contracting in this area, SBA estimates that small business coverage could increase by \$53.1 million or 5.8 percent of total revenues in this activity. SBA based this estimate on the per year funding of the firms that currently have Job Corps Center contracts, which would gain small business status if this proposed rule is adopted.

(3) What Are the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What Are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small

Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

(5) What Alternatives Will Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

As discussed in the preamble, SBA considered several alternative size standards and their implications on small businesses. First, SBA considered retaining a single size standard of \$6 million for the Other Technical and Trade Schools industry. In researching firms engaged in the operation and maintenance of Job Corps Centers, SBA concluded that no single size standard could adequately define small business in the whole industry. The size standard would be either too low for Job Corps Centers or too high for other industry activities, such as graphics arts schools, real estate schools, and broadcasting schools. Establishing two size standards for this industry would enable SBA to determine the most appropriate size standard for disparate segments of the industry.

SBA also considered restoring the \$20 million size standard for Job Corps Centers. However, as discussed in the preamble, this size standard would not allow for sufficient growth and development of a small Job Corps Center contractor. A firm would be at risk of losing its small business status if it received two average-size contracts.

By establishing the size standard at \$30 million, SBA will create opportunities for the small businesses in an industry where only five firms are below the size standard. Of these five firms, four have revenues below \$1 million and only one firm has a Job Corps Center contract. If SBA retains the current \$6 million size standard, it will not accurately reflect the smaller segment of businesses that participate in operating and maintaining Job Corps Centers.

SBA welcomes comments on other alternatives that minimize the impact of this rule on small businesses and achieve the objectives of this rule. Those comments should describe the alternative and explain why it is preferable to the proposed rule.

List of Subjects in 13 CFR Part 121

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

Accordingly, for the reasons stated in the preamble, SBA proposes to amend

part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

2. Amend § 121.201 as follows:

a. In the table “Small Business Size Standards by NAICS Industry” under the heading “Subsector 611—Educational Services,” revise the entry for 611519 to read as follows; and

b. Add footnote 17 to the end of the table to read as follows:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in million of dollars	Size standards in number of employees
*	*	*	*
Subsector 611—Educational Services			
*	*	*	*
611519....	Other Technical and Trade Corps	\$6.0
EXCEPT	Job Corps Centers	¹⁶ \$30.0
*	*	*	*

Footnotes:

¹⁶ NAICS codes 611519—Job Corps Centers. For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, lift skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

Dated: November 15, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02–29647 Filed 11–21–02; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 134

RIN: 3245–AE92

Small Business Size Regulations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its small business size regulations and the regulations applying to appeals of size determinations. The proposed rule would amend the definitions of affiliation, annual receipts, and employees. It would also make procedural and technical changes to cover new programs such as SBA’s HUBZone program and the government-wide Small Disadvantaged Business program. The proposed rule would

codify several long-standing precedents of SBA’s Office of Hearings and Appeals and would clarify the jurisdiction of that office.

DATES: Comments must be received on or before January 21, 2003.

ADDRESSES: Written comments should be addressed to John W. Klein, Associate General Counsel for Procurement Law, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Laura M. Eyester, Office of General Counsel, (202) 619–1801.

SUPPLEMENTARY INFORMATION: SBA’s small business size regulations (13 CFR part 121) are used to determine eligibility for all SBA and Federal programs that require an entity to be a small business concern. In the past, to be considered small, concerns were required to qualify under a particular size standard that corresponded to a four-digit Standard Industrial Classification (SIC) code. Effective October 1, 2000, to be considered small, concerns are required to qualify under a particular size standard that corresponds to the six-digit North American Industrial Classification System (NAICS) code. SBA published

its final rule setting forth the various NAICS codes and corresponding size standards at 65 FR 30836 (May 15, 2000). SBA published a technical correction to the final at 65 FR 53533 (September 5, 2000). That final rule changed all references to SIC codes in part 121 to NAICS codes. This proposed rule would not change any size standards currently corresponding to specific NAICS codes.

With a few exceptions, SBA size standards are based on either average annual receipts or number of employees, depending on the industry. When measuring a concern’s size, the receipts or employees of affiliated concerns are included. The proposed rule would modify the definitions of affiliation, annual receipts, and number of employees. The proposed changes to part 134 would clarify the jurisdiction of SBA’s Office of Hearings and Appeals (OHA) and make certain technical amendments.

Section-by-Section Analysis

SBA proposes to amend § 121.102 by adding a new paragraph (d) that would recognize that there currently exists an internal Size Policy Board at SBA that is responsible for making recommendations to the Administrator

on size standards, other size eligibility requirements, and size protest procedures. In addition, SBA proposes to amend § 121.103 to specifically incorporate into the definition of "affiliation" certain provisions that were previously contained in the regulations. Because there may have been some confusion regarding the more generalized affiliation language when SBA amended its regulations in 1996, SBA believes it is necessary to again specifically state other bases of possible affiliation in the regulations. The section would be revised to state that control may be affirmative or negative, provide an example of negative control, state that control may be exercised indirectly through a third party, and state that affiliation may be found under the totality of the circumstances even though no single factor is sufficient to constitute affiliation. These three changes codify long-standing OHA rulings. *See, e.g., Size Appeal of Jensco Marine, Inc.*, SBA No. SIZ-4330 (1998); *Size Appeal of National Welders*, SBA No. SIZ-4315 (1998); *Size Appeal of First American Tax Valuation, Inc.*, SBA No. SIZ-4206 (1996); and *Size Appeal of Field Support Services, Inc.*, SBA No. SIZ-4176 (1996). (OHA decisions cited in this preamble can be located at www.sba.gov/oha/searchpage.html or by contacting OHA by e-mail at oha@sba.gov or by phone at 202-401-8200.)

This proposed rule would change the title of § 121.103(b) from "Exclusion from affiliation coverage" to "Exceptions to affiliation coverage" for clarity. In addition, the proposed rule would amend § 121.103(b)(2) to clarify the exception to affiliation for Indian tribes (including Alaska Native Corporations), Community Development Corporations (CDCs) or Native Hawaiian Organizations (NHOs). Specifically, the proposed rule would specify that the exception applies whether the tribe, CDC or NHO owns the concern whose size is at issue directly, or through another entity, which is wholly-owned by the tribe, CDC or NHO. The proposed rule would also provide that affiliation could not be found among several tribally, ANC, CDC or NOH-owned concerns based on common management. This is an extension of the current regulation, which precludes affiliation based solely on common ownership. SBA believes that this change is particularly needed in the context of tribally-owned concerns where tribal board members often are also board members of tribally-owned concerns. SBA specifically asks for comments as to whether this exception

from affiliation goes far enough, or whether SBA should provide the same exception to affiliation as that contained for the 8(a) program in § 124.109(c)(2)(iii). SBA notes, however, that the exception to affiliation for the 8(a) program is statutorily based, while the general exception contained in § 121.103(b)(2) is not.

The proposed rule would also add language to both § 121.103(b)(2) and (b)(6) to clarify that SBA may find affiliation other than through common ownership or common management, and with respect to approved mentor/protégé relationships, other than on the basis of the mentor/protégé agreement. This is not a change in policy, but a clarification of existing policy.

SBA proposes two changes to § 121.103(c). Section 121.103(c)(1) would be amended by adding the word "voting" to clarify that only voting stock is considered in determining affiliation. In addition, SBA proposes adding a sentence to § 121.103(c)(2) stating that the presumption of control may be rebutted by showing that control does not in fact exist. For example, in *Size Appeal of Tri-Fuels, Inc.*, SBA No. SIZ-3563 (1992), OHA held that the presumption that minority shareholders owning substantially equal blocks of stock each control a firm was rebutted where a shareholder's agreement specified that each of the shareholders could appoint one of five directors. The proposed rule would also add a new § 121.103(c)(3), which would provide that where a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, SBA will deem the concern's Board of Directors and its Chief Executive Officer (CEO) or President to have the power to control the concern in the absence of evidence to the contrary. In the absence of evidence to the contrary, SBA will find control in such circumstances to rest with the Board of Directors and with the highest ranking officer of the concern (either its CEO or President) because control of the concern must rest somewhere.

Section 121.103(d) discusses affiliation, which arises under stock options, convertible debentures, and agreements to merge. SBA gives present effect to all such arrangements in determining affiliation. SBA proposes to amend the section by setting forth exceptions to this "present effect" rule that have been developed by OHA rulings. *See, e.g., Size Appeal of Consolidated Industries, Inc.*, SBA No. SIZ-4235 (1997). One proposed exception would not give present effect to agreements to open or continue negotiations towards the possibility of a

merger or a sale of stock at some later date. Another proposed exception would not give present effect to options, debentures, and agreements that are subject to conditions that are incapable of fulfillment, speculative, conjectural, remote, or unenforceable under state or Federal law.

Section 121.103(e) covers control through common management and would be amended to clarify that affiliation arises when an officer, director, managing member, or partner controls two concerns. Section 121.103(f) would expand the current regulation at § 121.103(a)(3) covering the concept of "identity of interest." The concept is that two or more persons with an identity of interest, such as members of the same family or with common investments in more than one concern, may be treated as a single party for size determination purposes. *See, Size Appeal of Golden Bear Arborists*, SBA No. SIZ-1899 (1984). Although this provision was deleted as a separate basis for affiliation from part 121 in 1996, when SBA streamlined its regulations, *see*, 13 CFR 121.401(d) (1995), the concept remained under the "General Principles of Affiliation," and OHA continues to use the identity of interest concept in ruling on affiliation issues. *See, e.g., Size Appeal of Lyons Security Service, Inc.*, SBA No. SIZ-4264 (1997). SBA believes that for purposes of clarity this rule should be explicitly set forth as a separate basis for finding affiliation in the size regulations.

SBA also proposes to add § 121.103(g), "Affiliation based on the newly organized concern rule." This proposed section provides that affiliation may arise where former officers, directors, stockholders, managing members (in a limited liability corporation) or key employees of one concern organize a new concern in the same or related industry and serve as its officers, directors, stockholders, managing members or key employees, and the first concern will provide contractual, financial, or other assistance to the new concern. This provision also previously appeared in SBA's size regulations, and SBA believes that it is appropriate to add it back to the regulations as a separate basis for finding affiliation. SBA notes that even after the regulatory change removing the newly organized concern concept as a separate basis for finding affiliation, OHA has continued to use it from the general principles of affiliation contained in the regulations to find affiliation. *See, e.g., Size Appeal of Lyons Security Service, Inc.*, *supra*; *Size*

Appeal of Frontier Applied Sciences, Inc., SBA No. SIZ-4316 (1998).

SBA proposes to redesignate the joint venture regulation currently at § 121.103(f) to § 121.103(h), clarify it, and define its key terms. SBA receives numerous inquiries concerning the definition of the terms "joint venture" and "teaming arrangement." Therefore, SBA proposes to add definitions of these terms in its regulations. SBA is using the definitions of these terms as set forth in parts 9 and 19 of the Federal Acquisition Regulation (FAR), title 48 of the Code of Federal Regulations, for consistency in the government contracting field. In addition, in § 121.103(h)(5), SBA proposes to add language clarifying that for size purposes a concern must include in its revenues its proportionate share of joint venture receipts, or in its total number of employees its proportionate share of joint venture employees. A concern that was found to be affiliated through the "ostensible subcontractor" rule cannot, however, claim that because SBA found there to be a joint venture in effect for a particular contract it can exclude the receipts/employees of its subcontractor (*i.e.*, the ostensible subcontractor), which SBA deemed to be a joint venturer. SBA will exclude the proportionate share of receipts/employees only of true joint venture partners.

SBA is considering another change to the joint venture regulation, as well. SBA's regulations allow joint ventures to be considered small for larger procurements when certain requirements are met. *See* § 121.103(f)(3). In general, SBA regards joint ventures as short term relationships, which enable two or more concerns to enter into a business relationship to perform a specific contract. SBA is considering adopting a rule that would allow two or more small businesses to form a joint venture relationship that would go beyond a specific contract and still afford them the exclusion from affiliation (if the other requirements are met). In other words, the joint venture could be an ongoing relationship that would allow the concerns to seek out several different larger contract opportunities and still get an exclusion from affiliation without requiring the entities to form a separate joint venture for each contract opportunity. SBA is specifically requesting comments on this proposal.

SBA proposes several changes to § 121.104, which pertain to how the annual receipts of a concern are calculated. On January 31, 1996, SBA amended its size regulations to simplify

the method by which it determines average annual receipts (aar). Under the current regulations, SBA bases its calculation of a concern's aar solely on information contained in the concern's Federal income tax returns over its last three completed fiscal years. 61 FR 3280 (January 31, 1996). Previously, SBA could rely either on a concern's regular books of account or Federal income tax returns to determine a concern's aar. That policy change was made by SBA in an effort to simplify its size regulations by using the information a business concern reports to the Internal Revenue Service (IRS) for tax purposes to determine the annual receipts of a concern. The 1996 revisions also deleted SBA's requirement that a concern whose small business size status had been protested had to restate its receipts based on the accrual method of accounting if its books of account or tax returns were prepared using a different method of accounting. Since 1996, a number of issues have arisen concerning that revision and SBA now believes the public would benefit from additional regulatory guidance on these matters. In addition, OHA has rendered several significant rulings relating to the calculation of annual receipts and SBA believes these rulings should be codified in SBA's size regulations so the public is aware of them.

Thus, SBA is proposing to modify its definition of receipts in § 121.104(a)(1). This modification would identify the items on a Federal tax return that are to be used to calculate receipts. Currently, the regulation states that receipts consist of "total income" and "gross income" plus the "cost of goods sold." Although these terms as defined by the IRS include income from all sources, SBA has received comments from some businesses stating that certain types of income not explicitly specified in the regulations could be excluded in determining receipts. To eliminate any such misinterpretation, SBA is proposing to remove the words "total income" and "gross income" and add in their place "gross receipts," "gross sales," and "other income." This change in terminology merely lists the items on a Federal tax return that comprise all or part of total or gross income. In addition, SBA is proposing a revision to the definition of receipts to include interest, dividends, rents and royalties received by partnerships, S corporations, and sole proprietorships. For corporations, income from these sources is included in total income as reported on IRS Form 1120. However, for partnerships and S corporations, these items are reported separately from

total income on Schedule K of IRS Form 1165 and 1120S, respectively, and on Schedule C or S of IRS Form 1040 for sole proprietorships. Business entities such as limited liability corporations (LLCs) can elect the tax entity (partnership, corporation, or disregarded entity) that best suits their need. This is often referred to as "check the box." *See* 26 CFR 301.7701-3 (located at <http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1>) and IRS Form 8832 (located at http://www.irs.gov/forms_pubs/forms.html). To be consistent with the corporate tax return, and to continue SBA's long-standing policy of including income from all sources in its definition of receipts, SBA proposes to revise § 121.104(a)(1) to specifically include these sources of income in the definition of receipts.

SBA also proposes to expand its exclusion of receipts received by an agent for another. The existing regulation allows this exclusion only for agents specifically identified in the regulation, such as a travel agent. While the proposed regulation would continue to list those agency-type business entities for which amounts collected for another would be excluded, it would also permit SBA to find a similar agent-type situation to be equally excluded. SBA's concern is that this provision be applied consistently. Thus, SBA would exclude amounts collected for another only when a specific type of business (or industry) demonstrates that that is the practice in the industry. SBA would not exclude amounts based on specific facts of one business entity. This revision will eliminate the need to conduct a separate study and rulemaking to expand the list of agents that can exclude amounts they receive for another and apply a general principle in the case of agents.

Finally, SBA would also clarify this section to state that the only exclusions from the definition are those specifically provided for in the section and that all other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. *See, e.g., Size Appeal of Uniband, Inc.*, SBA No. SIZ-4326 (1998); *Size Appeal of Aliron International, Inc.*, SBA No. SIZ-4317 (1998).

Proposed § 121.104(a)(1) would provide that the Federal income tax return and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern, and that SBA will not consider tax returns or

amendments filed with the IRS after the initiation of a size determination. This proposed change would preclude a concern that is the subject of a size protest from providing revised Federal tax returns to SBA while a size determination or appeal is pending. If SBA were to accept amended tax returns prepared after initiation of a size determination, SBA would constantly be re-evaluating cases that had already been completed or that were substantially prepared. This would invariably lead to delays in the size determination process and, in the case of pending procurements, delays in contract award. A business concern is expected to base its small business self-certification on information existing at that time. This rule is in accord with OHA rulings that size status must be based on documents in existence and available as of the date of self-certification. *See, e.g., Size Appeal of MTB Investments, Inc.*, SBA No. SIZ-4239 (1997); *Size Appeals of J.L. Associates, Inc. and HLJ Management Group, Inc.*, SBA No. SIZ-3102 (1988). Where a concern is determined to be other than small, but legitimately erred in reporting its income on its Federal tax returns, it could subsequently request recertification as a small business from SBA based on amendments filed with the IRS. SBA then would be able to conduct a review of the amended returns without delaying the size determination or the Federal procurement process.

Proposed § 121.104(a)(2) would cover situations where a concern has not filed a Federal income tax return for one or more of its most recently completed three fiscal years. This proposed regulation is intended to codify OHA's ruling in *Size Appeal of Troy Systems, Inc.*, SBA No. SIZ-4296 (1998). In that appeal, a concern had not filed a Federal income tax return for its most recently completed fiscal year at the time it self-certified as small. The appellant argued that because the tax return was not available, it did not have to submit any information for that year. OHA rejected that argument. The proposed rule provides that in such a situation, SBA may use any other information that is available, such as an audited financial statement or affidavit from the concern's accountant or chief financial officer.

Section 121.104(b)(3) is the formula SBA uses to determine annual receipts when the concern has a "short year" (as defined by the IRS) as one of the years within the period of measurement. The proposed rule would not change the substance of the formula. It would

merely clarify the language for ease of use.

Section 121.104(d) applies to the annual receipts of a concern's affiliates and requires the inclusion of an affiliate's receipts during the entire period of measurement, not just the period after affiliation arose. This rule has existed for many years and SBA proposes to simply clarify the language.

Section 121.106 addresses how SBA counts a concern's number of employees. SBA proposes to amend § 121.106(a) to clarify that SBA may utilize the same criteria used by the IRS for Federal income tax purposes in determining whether individuals are employees. *See, e.g., IRS Publication 15A, "Employer's Supplemental Tax Guide"* (located at http://www.irs.gov/forms_pubs/forms.html), which provides guidance on whether a person is a common-law employee, a statutory employee, a statutory nonemployee, or an independent contractor. In addition, SBA's proposed amendment states that it considers "leased" employees to be employees of the concern. The proposed rule continues to direct SBA to consider the totality of the circumstances when determining whether certain individuals are to be considered employees of the concern in question. This "totality of the circumstances" language stems from SBA Size Policy Statement No. 1, published in the **Federal Register** on February 20, 1986, 51 FR 6099, and that Size Policy Statement continues to have effect.

Further, SBA proposes to amend § 121.106(b)(4) by explicitly describing how employees of affiliates and former affiliates are treated, rather than simply referring to the manner in which annual receipts of affiliates and former affiliates are treated in § 121.104.

SBA also proposes to revise Footnote 14 to the Table of Small Business Size Standards by NAICS Industry in § 121.201. Specifically, the proposed revisions to Footnote 14(b) adds language to clarify that a Federal procurement involving a range of environmental services to restore a contaminated environment does not need to include remedial action as one of three activities to be classified under this size standard. SBA has learned that some Federal agencies have interpreted this footnote to require remedial action to be part of the procurement before it will classify the procurement under "Environmental Remediation Services." This was not the intention of SBA when it established the size standard. SBA intended this size standard to apply to large scale, multi-disciplined procurements involving environmental remediation. To be classified under

Environmental Remediation Services, a procurement must satisfy two requirements. First, the general purpose of the procurement is to restore a contaminated environment. Second, the procurement requires tasks to be performed in a range of activities which can be classified in three or more NAICS industries, or sub-industries which have separate size standards, and that no industry or sub-industry accounts for 50 percent or more of the procurement. The statement "the general purpose of the procurement must be to restore a contaminated environment" was intended to mean that the procurement would be associated with environment remediation by performing a range of activities that would contribute to the eventual cleanup of a site. To clarify SBA's intent, the footnote is revised by stating "the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment * * *." Also, added is a list of activities usually associated with environmental remediation and related activities. This language makes clear that a procurement involving several activities, all in separate NAICS codes, that directly contribute to the eventual cleanup of a contaminated environment can be classified under this size standard, even though another procurement would be awarded to perform the actual cleanup.

SBA proposes to eliminate the existing dual size standard that currently applies to applicants for SBA financial assistance (§ 121.301(a)), and replace it with a single size standard requirement. Under the current regulation, an applicant for financial or disaster assistance must be small under two size standards. An applicant, along with its affiliates, must be small for the size standard for the industry in which the applicant alone is primarily engaged, and for the industry in which the applicant along with its affiliates is primarily engaged. Since most applicants are small businesses well below SBA's size standards, they generally do not have extensive affiliation relationships with other business concerns. Thus, SBA believes a dual size standard requirement is not needed for these programs. SBA also believes that the wording of the dual size standard is not clear, and has caused confusion as to its proper application. For these reasons, SBA is proposing a single size standard requirement in which a business concern eligible for financial and disaster assistance is a concern that, combined with its affiliates, does not

exceed the size standard of the primary industry of the applicant concern alone.

Section 121.301(d)(1), which contains the size standard for surety bond guarantee assistance, would be amended by adding the words "together with its affiliates" to make it clear that the receipts of all affiliates must be included. This change is for clarity purposes only, as SBA always includes the receipts or employees of a concern's affiliates when determining the concern's size. SBA also proposes to revise § 121.301(e) to state that an applicant for financial assistance must use all of the assistance within a labor surplus area (LSA) in order to obtain the benefit of the 25% size standard differential. The current regulation does not clearly provide what percentage of work must be performed in an LSA. It has always been SBA's intent to require 100% of the assistance be used in an LSA in order to get the size differential, but a recent case has raised the question as to whether the regulation could be read to permit less than 100% of the assistance to be used in an LSA. This proposed change would clarify SBA's position in this regard.

Section 121.302 addresses when SBA determines the size status of an applicant for SBA financial assistance. The section would be amended to include a provision for financial assistance from a Small Business Investment Company (SBIC) licensee and from a New Markets Venture Capital Company.

Section 121.401, covering what procurement programs are subject to size determinations, would be amended for plain language purposes.

The proposed rule would amend the section heading for § 121.402 to read "What size standards are applicable to Federal Government Contracting programs?" In addition, SBA proposes to amend § 121.402(a) to state that a contracting officer (CO) must use the size standard in effect at the time the solicitation is issued. If SBA amends a size standard and it becomes effective after the solicitation is issued, then the CO would not be required to amend the solicitation and use the new size standard. However, the proposed regulation does note that if the size standard is amended and becomes effective before the date initial offers are due, the CO may modify the solicitation and use the new size standard. This has been a long-standing policy of SBA's, and SBA believes it should be specifically set forth in the regulations for clarity purposes.

Section 121.404 would be amended to add additional exceptions to the general rule that the size status of a concern is

determined as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price. Proposed § 121.404(a)(1) would provide that a concern applying to be certified as a Participant in SBA's 8(a) Business Development (8(a) BD) program, as a small disadvantaged business (SDB), or as a HUBZone small business must qualify as small as of the date of certification by SBA. This is not a change in SBA policy. SBA currently requires a concern to be small at the date of certification for these programs, but those regulatory requirements are contained in the program specific regulations only. The proposed rule would simply add those requirements to the size regulations as well. When requiring an 8(a) BD, HUBZone, or SDB applicant to be small for "its primary industry classification," the concern's primary industry classification is determined by looking solely at the applicant concern (*i.e.*, by excluding its affiliates), but the size of the concern is determined by including the receipts or employees of all affiliates.

Another new exception would apply to the case where a solicitation is modified so that initial offers are no longer responsive to the solicitation. In such a case, proposed § 121.404(a)(4) would provide that a concern must recertify that it is small at the time it submits a responsive offer which includes price to the modified solicitation. SBA believes that this makes sense and flows from existing SBA policy. If a solicitation changes drastically so that a previous offer would no longer be responsive, it is in effect a new solicitation. As such, a firm must certify its status as a small business with respect to the new solicitation.

The proposed rule would also add an exception for the subcontracting program. Under proposed § 121.404(a)(5), for subcontracting purposes, a concern must qualify as small as of the date that it certifies that it is small for the subcontract. The date of offers for or the award of the prime contract are not relevant to whether a concern is small for a subcontract. In addition, the applicable size standard would be the size standard in effect at the time the concern self-certifies that it is small for the subcontract, not the size standard that may have been in effect when the prime contract was awarded or otherwise.

The proposed rule would add a final exception applying to two-step sealed bidding under subpart 14.5 of the FAR, 48 CFR. Under two-step sealed bidding, the proposed rule would require that a

concern must qualify as small as of the date that it certifies that it is small as part of its step one proposal. SBA believes that it makes sense to establish size as of the date of the step one proposal in order to give certainty early on in the process who is and who is not eligible for such an award.

Proposed § 121.404(b) would specify that a concern that qualified as a small business at the time it receives a contract is considered to be a small business throughout the life of that contract. This is not a change in policy, but merely puts into the regulations SBA's long-standing position on this issue. Proposed § 121.404(c) covers the case where an existing contract is "renewed" by a procuring activity. SBA believes that the renewal of an existing contract is a term that is imprecisely used. Renewal should refer to a follow-on contract. In that case, the date at which size is determined is set by the general rule specified in § 121.404(a) (*i.e.*, the date that the concern submits a written self-certification that it is small to the procuring agency for the renewal contract). Sometimes the term "renewal" is incorrectly used where a procuring agency exercises an option. In that case, there is no new contracting action. The authority for the option relates back to the original contract. As set forth in proposed § 121.404(b), mentioned above, as long as a concern qualified as a small business at the time it receives a contract, it is considered to be a small business throughout the life of that contract. Therefore, a concern that was small at the time of award would always be considered a small business for purposes of any options relating to that contract. Proposed § 121.404(b) would specifically provide that where a concern grows to be other than small, the procuring agency may exercise options and still count the award as an award to a small business. SBA is, however, considering a rule which would place a limit on the amount of time a concern would be deemed a small business. Specifically, SBA is considering a separate rule making that would permit a procuring agency to treat a concern as a small business for no more than 5 years from the date of award.

Section 121.406(b)(1)(ii) would be amended to delete the requirement that a nonmanufacturer must normally sell the items being supplied to the general public. This rule was based on provisions of the Walsh-Healey Public Contracts Act, which permitted Federal acquisitions of supplies only from manufacturers or "regular dealers." One of the requirements for being a regular dealer was to sell items to the general

public. These provisions of the Walsh-Healey Act were repealed by the Federal Acquisition and Streamlining Act of 1994. SBA believes that requiring a firm to sell to the general public is overly restrictive. A firm may be a legitimate, viable business selling exclusively to government entities. SBA does not believe that a firm that sells only to the government should be excluded from being considered a small business just because it does not generally sell items to the general public. Therefore, so long as a firm normally sells the type of item either to public or private entities, it may qualify as a small business nonmanufacturer under SBA's size regulations. The proposed rule would also change the provision to require the concern to normally sell the same "type of item." The current regulation simply states that a concern must sell "the items" being supplied. SBA believes that the current provision could be read to be overly restrictive. Under the proposed rule, a firm would not need to have a track record of selling the exact item, but only items of the same type.

The proposed rule would also add clarifying language to § 121.406(b)(2) to explain what a firm that makes changes to an item and then resells it must do in order to qualify as an eligible small business manufacturer. The current regulation states that firms that perform only minimal operations upon the item being procured do not qualify as manufacturers. The proposed rule adds language, which states that "[f]irms that add substances, parts, or components to an existing end-item to modify its performance will not be considered the end-item manufacturer where those identical modifications can be performed by and are available from the manufacturer of the existing end item." If a firm adds something to an item that the manufacturer of that existing item does not provide, the firm will be considered the manufacturer of the ultimate end item (*i.e.*, the item plus the addition). For example, if firm A manufactures a saw, the Government wants to purchase a saw with a safety switch, and firm B adds a safety switch to the saw, firm B, and not firm A, will be considered the manufacturer of the end item (*i.e.*, saw with safety switch) provided firm A does not itself make or provide a saw with safety switch. Similarly, a firm that merely installs a video card that the manufacturer of a computer could have installed will not be considered the manufacturer of computer.

Currently, under § 121.410, a business concern is small for purposes of a subcontract awarded by a Federal prime contractor if: (a) For subcontracts of

\$10,000 or less, the concern bidding on the subcontract has 500 or fewer employees averaged over each pay period of the previous year, or, (b) for subcontracts of more than \$10,000, the concern bidding on the subcontract is no larger than the size standard corresponding to the NAICS industry that best represents the scope of work of the subcontract.

This rule proposes to eliminate the 500-employee size standard provision for subcontracts of less than \$10,000 and require that the size standard of the NAICS industry that best matches the purpose of the subcontract be used. This change merely adopts the size standard policy now in effect for subcontracts of \$10,000 or greater.

SBA is proposing this change for two reasons. First, this proposed change makes the size standards requirements consistent for all prime Federal contracts and for subcontracts awarded by prime contractors. Under this policy, the small business status would not change depending on the size of a subcontract or whether the contract was awarded as a Federal prime contract or as a subcontract of a Federal prime contract. SBA is also concerned about inconsistencies of two-tiered subcontracting size standards. A prime contractor awarding a subcontract classified in a NAICS industry with a receipt-based size standard (primarily in the construction and service industries) will have a higher size standard associated with subcontracts of less than \$10,000 than the size standard for the same type of subcontract but valued over \$10,000. For example, a subcontract for analytical testing services falls under NAICS code 541620, Environmental Consulting Services, and SBA has established a size standard for this industry of \$6 million in average annual receipts. If the value of the subcontract is more than \$10,000, a small business is defined as one with \$6 million or less in average annual receipts. A firm of this size has about 60 to 70 employees. Yet, under the current regulations, a subcontract of less than \$10,000 allows firms of up to 500 employees to qualify as small businesses. SBA believes that one size standard should apply to the same type of subcontracts, regardless of their value.

Second, the two-tiered size standard based on the size of the subcontract is not widely known or followed by prime contractors and small businesses. SBA believes establishing a policy of having a consistent size standard requirement at the prime and subcontracting level is more desirable than retaining and educating the prime contractors and

subcontractors about two-tiered size standards. Most prime contractors verify the status of their small business subcontractors based on the size standard of the subcontractor's primary NAICS industry or based on the size standard of the prime contract. These methods for ascertaining the small business status of a subcontractor lead to an incorrect small business determination in many cases, since the subcontractor must be small based on the industry of the subcontract, which is not necessarily the same as the primary industry of the subcontractor or the industry of the prime contract. SBA believes that the proposed change reflects how most prime contractors have been administratively determining the small business status of their subcontractors. Enforcing the current two-tiered size standard regulation would in essence subject prime contractors to a different size standard requirement than generally being followed. Thus, change should have little if any impact.

SBA invites comments to the elimination of the two-tiered subcontracting size standards requirement. SBA also welcomes suggestions on other approaches to size standards for the Subcontracting Program. Alternative size standards should address how they would be an improvement over the current and proposed subcontracting size standards and how they best protect the interests of small business.

Section 121.411 would be amended by deleting the words "Procurement Automated Source System (PASS)" and substituting the words "Procurement Marketing & Access Network (PRO-Net)." PASS no longer exists and has been replaced by PRO-Net. PRO-Net is an online database of information on thousands of small businesses. PRO-Net serves as a search engine for contracting officers, a marketing tool for small companies, and a "link" to procuring opportunities and other important information.

Sections 121.601 through 121.604 would be changed by removing all references to "Minority Enterprise Development" and "MED" and substituting "8(a) Business Development" and "8(a) BD." SBA no longer uses the former terms.

The proposed rule would amend § 121.702(a) to recognize that for purposes of the SBIR program a joint venture is permitted where each entity to the venture is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. The current requirement does

not contain such an exception for joint ventures, and requires 51 percent direct ownership by individuals who are U.S. citizens or permanent resident aliens in every case. This change is being made to make the size regulations consistent with a recent change made to the SBIR Policy Directive.

SBA proposes to amend § 121.1001 entitled "Who may initiate a size protest or request a formal size determination?" Section 121.1001(a)(1)(i) presently allows "any offeror" to file a size protest in connection with a particular procurement or sale. The purpose of the proposed regulation is to give standing to those concerns whose successful challenge would enable them to compete for award. This section would be changed to provide that "any offeror whom the contracting officer has not eliminated for reasons unrelated to size" may file a protest. An offeror that has been eliminated for reasons unrelated to size would not be able to compete for award if the protest were successful, and, thus, should not have standing to question another firm's size status. This change would codify long-standing OHA precedent on this issue. *See, e.g., Size Appeal of Arcata Associates, Inc.*, SBA No. SIZ-3377 (1990).

The proposed rule would amend § 121.1001(a)(5)(iii) applying to protests under the SDB program to delete the reference to the Associate Administrator (AA) for MED, and substitute the SBA Associate Administrator for 8(a) Business Development. Section 121.1001(a)(6)(iv), applying to protests under the HUBZone program, would be changed to delete the reference to the AA for Government Contracting and substitute SBA's AA for the HUBZone program. Section 121.1001(a)(7)(3), applying to any unrestricted Government procurement in which status as a small business may be beneficial, would be changed by deleting the reference to the AA for MED and substituting the SBA AA for 8(a) BD.

The proposed rule would add new paragraphs (b)(7), (b)(8) and (b)(9) to § 121.1001 to authorize SBA program personnel to request formal size determinations regarding a firm's status as small for SDB certification, HUBZone certification, and being listed as a small business on PRO-Net, respectively.

SBA proposes to add a new § 121.1004(a)(4) to cover instances where notification of contract award is posted on the Internet, as authorized under Simplified Acquisition Procedures (SAP). In such cases, SBA proposes that a size protest must be made to the contracting officer within five business days after the electronic

posting. SBA also proposes to add a new § 121.1004(a)(5) that would provide that where no written notification is required, either prior to or at the time of award, a protest will be considered timely if filed within five days after receipt of verbal notification from the contracting officer or other agency representative. Under SAP, there is no requirement for the contracting officer to provide either pre-award or award notification to unsuccessful offerors. Consequently, the date of verbal notification or date of posting on the internet will be considered the start of the 5-day period allotted for a timely size protest. There may be other instances where there is no notice provided (*e.g.*, award of a task order under a schedule contract), and this provision would apply there as well.

SBA proposes to amend § 121.1007 containing the requirement that a size protest must allege specific facts by restoring the six examples that were formerly found at § 121.1604(a) (1995). SBA has received comments that these examples were helpful in determining whether or not a particular protest satisfies the specificity requirement.

The proposed rule would amend § 121.1008, describing what occurs after SBA receives a size protest or request for formal size determination. The proposed rule would require the SBA Government Contracting Area Director to notify SBA's AA/8(a) BD, if a protest involves the size status of a concern that SBA has certified as a small disadvantaged business, and notify the appropriate SBA district office, if a protest pertains to the apparent successful offeror on a requirement that has been reserved for competition among eligible 8(a) Participants. Section 121.1008(d) would be amended by adding a sentence requiring a concern whose size status is at issue to furnish information about its alleged affiliates to SBA, notwithstanding any third party claims of privacy or confidentiality, because SBA does not disclose information obtained in the course of a size determination except as permitted by Federal law. This is intended to codify several OHA rulings. *See, e.g., Size Appeal of Donovan Travel, Inc., d/b/a Carlson Wagonlit Travel*, SBA No. SIZ-4270 (1997); *Size Appeal of Quantrad Sensor, Inc.*, SBA No. SIZ-4255 (1997).

The proposed rule would add clarifying language to § 121.1009(b), "*Basis for determination.*" Section 121.1009(g), "*Results of an SBA Size Determination.*" would be amended by making it clear that contract award may be made based on a formal size determination by a SBA Government

Contracting Area Director. It would also be amended to provide that an OHA decision on appeal will apply to the pending acquisition or sale if the decision is received before award. OHA decisions received after contract award will not apply to that acquisition or sale unless the contracting officer agrees to apply the OHA decision to that acquisition or sale.

The proposed rule would amend § 121.1101 by adding a new second paragraph providing that OHA will not review a formal size determination where the contract has been awarded and the issues raised in a petition for review are contract specific, such as compliance with the nonmanufacturer rule or joint venture/ostensible subcontractor rule. This change would conform the size appeal regulation to the re-certification regulation at § 121.1010(b) and codify long-standing OHA rulings. *See, e.g., Size Appeal of Lightcom International, Inc.*, SBA No. SIZ-4118 (1995).

Currently, § 121.1103 simply states that the procedures for NAICS code appeals are contained in section 19.303 of the Federal Acquisition Regulation (FAR), 48 CFR 19.303. SBA proposes to amend this section by setting forth in detail the specific procedures for NAICS code appeals rather than referring the reader to the FAR. The procedures set forth do not differ from those currently in the FAR.

Section 121.1205 would be amended by stating that a list of classes of products for which waivers of the Nonmanufacturer Rule have been granted may be obtained on SBA's Web site at www.sba.gov/GC/approved.html.

13 CFR part 134 contains rules of procedure governing cases before OHA, including size appeals and former SIC (now NAICS) code appeals. SBA is proposing several amendments to part 134, mainly to conform to the changes being proposed for part 121.

13 CFR 134.102 sets forth OHA's jurisdiction. The proposed rule would amend paragraph (k) to authorize an affected party to appeal a determination by the SBA Government Contracting Area Office as to whether two or more concerns are affiliated for purposes of SBA's financial assistance programs, or other programs for which an affiliation determination was requested. SBA financial assistance personnel may seek assistance from a Government Contracting Area Office in determining whether a loan applicant is affiliated with one or more other business entities. This may not be a "formal size determination" in the normal sense because the concerns even if affiliated may still qualify as small. However, this

determination is necessary in order to determine whether the borrower, including the borrower's affiliates, has exceeded the \$750,000 loan limit amount set forth in § 120.151 of this chapter. If the Area Office finds affiliation such that the borrower is determined to be ineligible to receive additional loan amounts, the firm may not currently appeal that determination to OHA as it is not a "formal size determination." This change would permit such an appeal.

Section 134.314 would be amended by adding a provision that the appellant has the burden of proof, by a preponderance of the evidence, in both size and NAICS code designations. This provision was formerly in the size regulations (*see* § 121.1707 (1995)), and since its deletion from the regulations, OHA has adopted this premise in its rulings. *See, e.g., Size Appeal of Rebmar, Inc.*, SBA No. SIZ-4173 (1996); *SIC Appeal of The Scientific Consulting Group, Inc.*, SBA No. SIZ-4186 (1996). SBA believes that it is appropriate to restore the provision to the regulations.

Finally, SBA proposes amending § 134.316(a) to state that an OHA judge will decline to decide substantive issues not properly raised on appeal, or which are abandoned, or have become moot. This would codify OHA precedent. *See e.g., Size Appeal of Lightcom International Inc.*, SBA No. SIZ-4118 (1995), *Size Appeal of Infotec Development, Inc.*, SBA No. SIZ-4197 (1996).

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

OMB has determined that this proposed rule does not constitute a "significant regulatory action" under Executive Order 12866. This rule would clarify SBA's procedural and definitional size rules. As such, the rule would have no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA. Therefore, the rule is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, the proposed rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise novel legal or

policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule, if adopted in final form, would not impose new reporting or record keeping requirements.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

SBA has determined that this proposed rule, if adopted in final form, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Although the rule amends several definitions concerning the size of a business concern, the majority of these amendments are clarification of current policy.

List of Subjects

13 CFR Part 121

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

13 CFR Part 134

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

For the reasons set forth in the supplementary information, SBA proposes to amend parts 121 and 134 of Title 13, Code of Federal Regulations, as follows:

PART 121

1. The authority citation for 13 CFR part 121 continues to read as follows:

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

2. Amend § 121.102 by adding a new paragraph (e) to read as follows:

§ 121.102 How does SBA establish size standards?

* * * * *

(e) SBA's Size Policy Board considers and makes recommendations to the Administrator relating to improvements in SBA regulations, procedures, and policy concerning size matters, including size standards.

3. Amend § 121.103 as follows:

- a. Revising the heading;
- b. Revising (a)(1), (3), (4), and adding new paragraphs (a)(5) and (a)(6);
- c. Revising the heading of paragraph (b);
- d. Revising paragraph (b)(2);
- e. Adding a new sentence to the end of paragraph (b)(6);
- f. Revising paragraphs (c), (d), and (e);
- g. Redesignating paragraph (f) as paragraph (h), and amending newly redesignated paragraph (h) by revising the introductory text, (h)(1), (h)(2), (h)(3), heading, (h)(3)(i), introductory text, (h)(3)(i)(B)(1), (h)(3)(ii), and (h)(4);
- h. Redesignating paragraph (g) as (i); and
- i. Adding new paragraphs (f) and (g).

The revisions and additions read as follows:

§ 121.103 How does SBA determine affiliation?

(a) *General Principles of Affiliation.*

(1) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

(2) * * *

(3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

(4) Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.

(5) In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(6) In determining the concern's size, SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(b) *Exceptions to affiliation coverage.*

(1) * * *

(2) Business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs) authorized by 42 U.S.C. 9805, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered affiliates of such entities, or with other concerns owned by these

entities because of their common ownership or common management. Affiliation may be found for other reasons.

* * * * *

(6) * * * Affiliation may be found for other reasons.

(c) *Affiliation based on stock ownership.* (1) A person (including any individual, concern or other entity) that owns, or has the power to control, 50 percent or more of a concern's voting stock, or a block of voting stock which is large compared to other outstanding blocks of voting stock, controls or has the power to control the concern.

(2) If two or more persons (including any individual, concern or other entity) each owns, controls, or has the power to control less than 50 percent of a concern's voting stock, and such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, SBA presumes that each such person controls or has the power to control the concern whose size is at issue. This presumption may be rebutted by a showing that such control or power to control does not in fact exist.

(3) If a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the concern's Board of Directors and CEO or President will be deemed to have the power to control the concern in the absence of evidence to the contrary.

(d) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* (1) In determining size, SBA considers stock options, convertible debentures, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, debentures, and agreements as though the rights granted have been exercised.

(2) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered "agreements in principle" and are thus not given present effect.

(3) Options, debentures, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, remote, or unenforceable under state or Federal law are not given present effect.

(4) An individual or concern that controls one or more other concerns cannot use options, debentures, or agreements to appear to terminate such control before actually doing so.

(e) *Affiliation based on common management.* Affiliation arises where one or more officers, directors, managing members, or partners who control the board of directors and/or management of one concern also control the board of directors or management of one or more other concerns.

(f) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(g) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns.

(h) *Affiliation based on joint ventures or teaming arrangements.* A joint venture is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management. A teaming arrangement for affiliation purposes is one in which two or more companies form a partnership or joint venture to act as a potential prime contractor. Affiliation may also be found between a potential prime contractor and its intended subcontractor pursuant to paragraph (h)(4) of this section.

(1) Parties to a joint venture or teaming arrangement are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture or teaming arrangement.

(2) Except as provided in paragraph (h)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers or teaming arrangement partners are affiliated with each other with regard to the performance of that contract.

(3) *Exception to affiliation for certain joint ventures and teaming arrangements.* (i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under paragraph (h) of this section so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(A) * * *

(B) * * *

(1) For a procurement having a receipts based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

* * * * *

(ii) A joint venture or teaming arrangement of at least one 8(a) Participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation under paragraph (h) of this section so long as the requirements of § 124.513(b)(1) of this chapter are met.

(iii) * * *

(4) A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor that performs primary and vital requirements of a contract, or of an order under a multiple award schedule contract, or a subcontractor upon which the prime contractor is unusually reliant. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

(5) For size purposes, a concern must include in its receipts its proportionate share of joint venture receipts, and in its total number of employees its proportionate share of joint venture employees.

* * * * *

4. Revise § 121.104 to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) *Receipts* means gross receipts, gross sales, interest, dividends, rents, royalties and other income as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts received in trust as an agent on behalf of another, in which the agent does not have a claim of right to such monies and the amounts do not increase the agent's asset base (such as a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker). For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.

(1) The Federal income tax return and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern. SBA will not use tax returns or amendments filed with the IRS after the initiation of a size determination.

(2) When a concern has not filed a Federal income tax return with the IRS for a fiscal year which must be included in the period of measurement, SBA will calculate the concern's annual receipts for that year using any other available information, such as the concern's regular books of account, audited financial statements, or information

contained in an affidavit by a person with personal knowledge of the facts.

(b) *Completed fiscal year* means a taxable year including any short year. "Taxable year" and "short year" have the meanings attributed to them by the IRS.

(c) *Period of measurement.* (1) Annual receipts of a concern that has been in business for three or more completed fiscal years means the total receipts of the concern over its most recently completed three fiscal years divided by three.

(2) Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52.

(d) *Annual receipts of affiliates.* (1) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status includes the receipts of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose. Receipts are determined for the concern and its affiliates in accordance with paragraph (c) of this section even though this may result in using a different period of measurement to calculate an affiliate's annual receipts.

(2) The annual receipts of a former affiliate are not included if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

5. Revise § 121.106(a) and (b)(4) to read as follows:

§ 121.106 How does SBA calculate number of employees?

(a) In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality

of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) * * *

(4)(i) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(ii) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

6. In § 121.201, revise paragraph (b) of footnote 14 to the Table of Small Business Size Standards by NAICS Industry to read as follows:

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

* * * * *

Footnotes

* * * * *

14. NAICS 562910—Environmental Remediation Services:

(a) * * *

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts) and also the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.*, engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services, Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procurement can be identified with a

separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

* * * * *

7. Amend § 121.301 by revising paragraphs (a), (d)(1) and (e) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant, including its affiliates, must not exceed the size standard for the industry in which the applicant is primarily engaged.

* * * * *

(d) * * *

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, its average annual receipts does not exceed \$6.0 million.

* * * * *

(e) The applicable size standards for purposes of SBA's financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25% whenever the applicant agrees to use all of the financial assistance within a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication "Area Trends in Employment and Unemployment."

8. Amend § 121.302 by revising paragraph (a), redesignating paragraph (d) as paragraph (e), revising newly redesignated paragraph (e), and adding the following new paragraph (d) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size status of an applicant for SBA financial assistance is determined as of the date the application for financial assistance is accepted for processing by SBA, except for the Preferred Lenders program, the Disaster Loan program, the SBIC program, and the New Markets Venture Capital program.

* * * * *

(d) For financial assistance from an SBIC licensee or a New Markets Venture Capital Company, size is determined as of the date a concern's application is accepted for processing by the SBIC or the New Markets Venture Capital Company.

(e) Changes in size after the applicable date when size is determined will not disqualify an applicant for assistance.

9. Revise the heading of § 121.305 to read as follows:

§ 121.305 What size eligibility requirements exist for obtaining financial assistance relating to particular procurements?

* * * * *

10. Revise § 121.401 to read as follows:

§ 121.401 What procurement programs are subject to size determinations?

The rules set forth in §§ 121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including the small business set-aside program, SBA's Certificate of Competency program, the Very Small Business program, SBA's 8(a) Business Development program, SBA's HUBZone program, the Small Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

11. Amend § 121.402 by revising the heading and paragraph (a), and by adding a new sentence to the end of paragraph (b) to read as follows:

§ 121.402 What size standards are applicable to Federal Government Contracting programs?

(a) A concern must not exceed the size standard for the NAICS code specified in the solicitation. The contracting officer must specify the size standard in effect on the date the solicitation is issued. If SBA amends the size standard and it becomes effective before the date initial offers (including price) are due, the contracting officer may amend the solicitation and use the new size standard.

(b) * * * Procurements for supplies must be classified under the appropriate manufacturing NAICS code, not under the wholesale trade NAICS code.

* * * * *

12. Revise § 121.404 to read as follows:

§ 121.404 When does SBA determine the size status of a business concern?

(a) SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer (or other formal response to a solicitation) which includes price. The following are the only exceptions to this rule:

(1) A concern applying to be certified as a Participant in SBA's 8(a) Business Development program (under part 124, subpart A, of this chapter), as a small disadvantaged business (under part 124, subpart B, of this chapter), or as a

HUBZone small business (under part 126 of this chapter) must qualify as a small business for its primary industry classification as of the date of certification by SBA.

(2) The size status of an applicant for a Certificate of Competency (COC) relating to an unrestricted procurement is determined as of the date of the concern's application for the COC.

(3) Size status for purposes of compliance with the nonmanufacturer rule set forth in § 121.406(b)(1) and the ostensible subcontractor rule set forth in § 121.103(f)(4) is determined as of the date of the best and final offer.

(4) Where a solicitation is modified so that initial offers are no longer responsive to the solicitation, a concern must recertify that it is a small business at the time it submits a responsive offer, which includes price to the modified solicitation.

(5) For subcontracting purposes, a concern must qualify as small as of the date that it certifies that it is small for the subcontract. The applicable size standard is that set forth in § 121.410 that is in effect at the time the concern self-certifies that it is small for the subcontract.

(6) For purposes of two-step sealed bidding under subpart 14.5 of the FAR, 48 CFR, a concern must qualify as small as of the date that it certifies that it is small as part of its step one proposal.

(b) A concern that qualified as a small business at the time it receives a contract is considered to be a small business throughout the life of that contract. Where a concern grows to be other than small, the procuring agency may exercise options and still count the award as an award to a small business.

(c) A follow-on or renewal contract is a new contracting action. As such, size is determined as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price for the follow-on or renewal contract.

13. Amend § 121.406 by revising paragraph (b)(1)(ii) and by adding a new sentence in paragraph (b)(2) after the fifth sentence to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts?

* * * * *

(b) *Nonmanufacturers.* (1) * * *

(ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied; and

* * * * *

(2) * * * Firms that add substances, parts, or components to an existing end-item to modify its performance will not

be considered the end-item manufacturer where those identical modifications can be performed by and are available from the manufacturer of the existing end item. * * *

14. Revise § 121.410 to read as follows:

§ 121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?

For subcontracting purposes pursuant to sections 8(d) of the Small Business Act, a concern is small for subcontracts which relate to Government procurements if it does not exceed the size standard for the NAICS code that best describes the product or service being acquired by the subcontract. However, subcontracts for engineering services awarded under the National Energy Policy Act of 1982 have the same size standard as Military and Aerospace Equipment and Military Weapons under NAICS 541213.

15. In § 121.411(a), remove the words "Procurement Automated Source System (PASS)" and add the words "Procurement Marketing & Access Network (PRO-Net)."

16. The undesignated center heading before § 121.601 is revised to read as follows:

SIZE ELIGIBILITY REQUIREMENTS FOR THE 8(A) BUSINESS DEVELOPMENT PROGRAM

17. Revise § 121.601 to read as follows:

§ 121.601 What is a small business for purposes of admission to SBA's 8(a) Business Development program?

An applicant must not exceed the size standard corresponding to its primary industry classification in order to qualify for admission to SBA's 8(a) Business Development Program.

§ 121.602 [Amended]

18. In § 121.602 replace the acronym "MED" in the heading and the text with the words "8(a) BD."

§ 121.603 [Amended]

19. In § 121.603 replace the acronym "MED" in the heading and in paragraphs (a), (b) and (d) with the words "8(a) BD."

§ 121.604 [Amended]

20. In § 121.604 replace the acronym "MED" in the heading and the text with the words "8(a) BD."

21. Section 121.702(a) is revised to read as follows:

§ 121.702 What size standards are applicable to the SBIR program?

* * * * *

(a) is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States;

* * * * *

22. Amend § 121.1001 by revising paragraphs (a)(1), (a)(2)(i), (a)(5)(i) and (iii), (a)(6)(i) and (iv), and (a)(7), introductory text, and (a)(7)(iii), and by adding new paragraphs (b)(1)(iii), (b)(7), (b)(8), and (b)(9) as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) Size Status Protests. (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, or any instance in which a procurement or order has been restricted to small business or a particular group of small business, the following entities may file a size protest in connection with a particular procurement, sale or order:

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

* * * * *

(2) * * *

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

* * * * *

(5) * * *

(i) Any offeror for the specific SDB requirement whom the contracting officer has not eliminated for reasons unrelated to size;

(ii) * * *

(iii) The responsible SBA Area Director for Government Contracting, the SBA Associate Administrator for Government Contracting, or the SBA Associate Administrator for 8(a) Business Development;

(6) * * *

(i) Any concern that submits an offer for a specific HUBZone set-aside procurement that the contracting officer has not eliminated for reasons unrelated to size;

* * * * *

(iv) The SBA Associate Administrator for the HUBZone Program, or designee.

(7) For any unrestricted Government procurement in which status as a small business may be beneficial, including, but not limited to, the award of a contract to a small business where there are tie bids, the opportunity to seek a Certificate of Competency by a small business, and SDB or HUBZone price evaluation preferences, the following

entities may protest in connection with a particular procurement:

* * * * *

(iii) The responsible SBA Area Director for Government Contracting, the SBA Associate Administrator for Government Contracting, or the SBA Associate Administrator for 8(a) Business Development.

(b) * * * (1) * * *

(iii) The SBA Associate Administrator for Investment or designee may request a formal size determination for any purpose relating to the Small Business Investment Company (SBIC) program (see part 107 of this chapter). A formal size determination includes a request to determine whether or not affiliation exists between two or more entities for any purpose relating to the SBIC program.

* * * * *

(7) In connection with initial or continued eligibility for the Small Disadvantaged Business (SDB) program, the following may request a formal size determination:

(i) The applicant or SDB concern; or (ii) The Assistant Administrator of the Division of Program Certification and Eligibility or the Associate Administrator for 8(a)BD.

(8) In connection with initial or continued eligibility for the HUBZone program, the following may request a formal size determination:

(i) The applicant or HUBZone concern; or

(ii) The Associate Administrator for the HUBZone program, or designee.

(9) For purposes of validating that firms listed in SBA's PRO-Net database are small, the Government Contracting Area Director may initiate a formal size determination when sufficient information exists that calls into question a firm's small business status. The current date will be used to determine size, and SBA will remove from the database any firm found to be other than small.

23. In § 121.1004 add new paragraphs (a)(4) and (a)(5) to read as follows:

§ 121.1004 What time limits apply to size protests?

(a) * * *

(4) Electronic notification of award.

Where notification of award is made electronically, such as posting on the Internet under Simplified Acquisition Procedures, a protest must be received by the contracting officer before close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after the electronic posting.

(5) No notice of award. Where there is no requirement for written pre-award notice or notice of award, or where the

contracting officer has failed to provide written notification of award, the 5-day protest period will commence upon oral notification by the contracting officer or authorized representative of the identity of the apparent successful offeror.

* * * * *

24. Revise the first sentence of § 121.1005 to read as follows:

§ 121.1005 How must a protest be filed with the contracting officer?

A protest must be delivered to the contracting officer by hand, telegram, mail, FAX, Federal Express or other overnight delivery service, e-mail, or telephone. * * *

25. Amend § 121.1007 by adding the following examples after paragraph (c):

§ 121.1007 Must a protest of size status relate to a particular procurement and be specific?

* * * * *

Example 1: An allegation that concern X is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation is unspecific.

Example 2: An allegation that concern X is large because it exceeds the 500 employee size standard (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y is sufficiently specific.

Example 3: An allegation that concern X is affiliated with concern Y without setting forth any basis for the allegation is unspecific.

Example 4: An allegation that concern X is affiliated with concern Y because Mr. A is the majority shareholder in both concerns is sufficiently specific.

Example 5: An allegation that concern X has revenues in excess of \$5 million (where \$5 million is the applicable size standard) without setting forth a basis for the allegation is unspecific.

Example 6: An allegation that concern X exceeds the size standard (where the applicable size standard is \$5 million) because it received Government contracts in excess of \$5 million last year is sufficiently specific.

26. In § 121.1008, revise the heading and paragraphs (a) and (d) to read as follows:

§ 121.1008 What occurs after SBA receives a size protest or request for a formal size determination?

(a) When SBA receives a size protest, the SBA Area Director for Government Contracting, or designee, will notify the contracting officer, the protested concern, and the protestor that the protest has been received. If the protest pertains to a requirement involving SBA's HUBZone program, the Area Director will also notify the AA/HUB of the protest. If the protest pertains to a requirement involving SBA's SBIR

Program, the Area Director will also notify the Assistant Administrator for Technology. If the protest involves the size status of a concern that SBA has certified as a small disadvantaged business (SDB) (see part 124, subpart B of this chapter) the Area Director will notify SBA's AA/8(a) BD. If the protest pertains to a requirement that has been reserved for competition among concerns that participate in SBA's 8(a) BD Program, the Area Director will notify the SBA district office servicing the 8(a) concern whose size status has been protested. SBA will provide a copy of the protest to the protested concern together with SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to complete the form and respond to the allegations in the protest.

* * * * *

(d) If a concern whose size status is at issue fails to submit a completed SBA Form 355, responses to the allegations of the protest, or other requested information within the time allowed by SBA, or if it submits incomplete information, SBA may presume that disclosure of the information required by the form or other missing information would demonstrate that the concern is other than a small business. A concern whose size status is at issue must furnish information about its alleged affiliates to SBA, despite any third party claims of privacy or confidentiality, because SBA will not disclose information obtained in the course of a size determination except as permitted by Federal law.

27. In § 121.1009 revise paragraphs (b) and (g) to read as follows:

§ 121.1009 What are the procedures for making the size determination?

* * * * *

(b) *Basis for determination.* The size determination will be based primarily on the information supplied by the protestor or the entity requesting the size determination and that provided by the concern whose size status is at issue. The determination, however, may also be based on grounds not raised in the protest or request for size determination. SBA may use other information and may make requests for additional information to the protestor, the concern whose size status is at issue and any alleged affiliates, or other parties.

* * * * *

(g) *Results of an SBA size determination.* (1) A formal size determination becomes effective immediately and remains in full force

and effect unless and until reversed by OHA.

(2) A contracting officer may award a contract based on SBA's formal size determination.

(3) If the formal size determination is appealed to OHA, the OHA decision on appeal will apply to the pending procurement or sale if the decision is received before award. OHA decisions received after contract award will not apply to that procurement or sale, but will have future effect, unless the contracting officer agrees to apply the OHA decision to the procurement or sale.

(4) Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.

(5) A concern determined to be other than small under a particular size standard is ineligible for any procurement or any assistance authorized by the Small Business Act or the Small Business Investment Act of 1958 which requires the same or a lower size standard, unless SBA recertifies the concern to be small pursuant to § 121.1010 or OHA reverses the adverse size determination. After an adverse size determination, a concern cannot self-certify as small under the same or lower size standard unless it is first recertified as small by SBA. If a concern does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on an application for SBA assistance, the concern must immediately inform the officials responsible for the pending procurement or requested assistance of the adverse size determination.

* * * * *

28. Revise § 121.1101 to read as follows:

§ 121.1101 Are formal size determinations subject to appeal?

(a) Appeals from formal size determinations may be made to OHA. Unless an appeal is made to OHA, the size determination made by a SBA Government Contracting Area Office or Disaster Area Office is the final decision of the agency. The procedures for appealing a formal size determination to OHA are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

(b) OHA will not review a formal size determination where the contract has been awarded and the issue(s) raised in

a petition for review are contract specific, such as compliance with the nonmanufacturer rule (*see* § 121.406(b)), or joint venture or ostensible subcontractor rule (*see* § 121.103(h)).

29. Revise § 121.1103 to read as follows:

§ 121.1103 What are the procedures for appealing a NAICS code designation?

(a) Any interested party adversely affected by a NAICS code designation may appeal the designation to OHA. The only exception is that, for a sole source contract reserved under SBA's 8(a) Business Development program (*see* part 124 of this chapter), only SBA's Associate Administrator for 8(a) Business Development may appeal the NAICS code designation.

(b) The contracting officer's determination of the applicable NAICS code is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code designation and applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. OHA will summarily dismiss an untimely NAICS code appeal.

(2)(i) The appeal petition must be in writing and must be sent to the Office of Hearings & Appeals, U.S. Small Business Administration, 409 3rd Street, SW., Suite 5900, Washington, DC 20416.

(ii) There is no required format for a NAICS code appeal, but an appeal must include the following information: the solicitation or contract number; the name, address, and telephone number of the contracting officer; a full and specific statement as to why the NAICS code designation is erroneous, and argument in support thereof; and the name, address and telephone number of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon the contracting officer who assigned the NAICS code to the acquisition and SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 3rd Street, SW., Washington, DC 20416.

(4) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by notice and order of the date OHA received the appeal, the docket number, and the Judge assigned to the case. The contracting officer's response to the appeal must include argument and supporting evidence (*see* part 134, subpart C, of this chapter) and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise specified by the Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately

send to OHA a copy of the solicitation relating to the NAICS code appeal.

(5) After close of the record, OHA will issue a decision and inform all interested parties, including the appellant and contracting officer. If OHA's decision is received by the contracting officer before the date offers are due, the solicitation must be amended if the contracting officer's designation of the NAICS code is reversed. If OHA's decision is received by the contracting officer after the due date of initial offers, the decision will not apply to the pending procurement, but will apply to future solicitations for the same products or services.

30. Revise § 121.1205 to read as follows:

§ 121.1205 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers of the Nonmanufacturer Rule have been granted is maintained in SBA's website at www.sba.gov/GC/approved.html. A list of such waivers may also be obtained by contacting the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, or the nearest SBA Government Contracting Area Office.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

31. The authority citation for 13 CFR part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), and 637(a).

32. Revise § 134.102(k) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(k) Appeals from size determinations and NAICS code designations under part 121 of this chapter. "Size determinations" include decisions by Government Contracting Area Directors that determine whether two or more concerns are affiliated for purposes of SBA's financial assistance programs, or other programs for which an appropriate SBA official requested an affiliation determination;

* * * * *

33. In § 134.314, revise the heading and add the following sentence at the end to read as follows:

§ 134.314 Standard of review and burden of proof.

* * * The appellant has the burden of proof, by a preponderance of the evidence, in both size and NAICS code appeals.

34. Amend § 134.316(a) by adding the following sentence at the end to read as follows:

§ 134.316 The decision.

(a) * * * The Judge will not decide substantive issues raised for the first time on appeal, or which have been abandoned or become moot.

* * * * *

Dated: November 8, 2002.

Hector V. Barreto,
Administrator.

[FR Doc. 02-29272 Filed 11-21-02; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 963]

RIN 1512-AC72

Bennett Valley Viticultural Area (2002R-009T)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of the Bennett Valley viticultural area in Sonoma County, California. The petitioned area consists of approximately 8,140 acres of valley and upland terrain, with 650 acres currently planted to grapes. The proposed area is within the established Sonoma Valley viticultural area, except for a 281-acre overlap into the Sonoma Coast viticultural area. A portion of the proposed area also overlaps the Sonoma Mountain viticultural area, which is itself totally within the larger Sonoma Valley viticultural area.

DATES: Written comments must be received by January 21, 2003.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 963). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202-927-7890. See the "Public Participation" section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA 94105-1906; telephone 415-271-1254.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR Part 9, American Viticultural Areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (USGS) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

If this proposed viticultural area is approved, bottlers using brand names

similar to the name of the viticultural area must review their existing products to insure that they are eligible to use the viticultural area's name as the appellation of origin. To be eligible, 85% of the grapes in the wine must be grown within the viticultural area. If a product is not eligible to use the viticultural area name as an appellation, the bottler must obtain approval of a label with a different brand name for that wine. (See 27 CFR 4.39(i).)

Bennett Valley Petition

ATF has received a petition proposing a new viticultural area to be called "Bennett Valley." The proposed 8,140-acre viticultural area is located in Sonoma County, California, just southeast of the city of Santa Rosa and approximately 45 miles northeast of San Francisco. Sonoma County is entirely within the North Coast viticultural area. The petitioned area is almost entirely within the Sonoma Valley viticultural area, with a small 281-acre overlap into the Sonoma Coast viticultural area. It also partially overlaps the Sonoma Mountain viticultural area, which is entirely within the Sonoma Valley area. Currently, there are 650 acres of planted vineyards in the proposed area.

This proposed viticultural area is about 5.5 miles long, northwest to southeast, 3.15 miles across at its widest point, and resembles the shape of a downward-pointing bullet. The floor of Bennett Valley runs the petitioned area's length, and Bennett Valley Road meanders from its northwest to southeast boundaries. This proposed viticultural area, including the surrounding hills and mountains, comprises the Matanzas Creek watershed. This creek flows west into the Russian River drainage system and eventually to the Pacific Ocean. The petition states that differences in topography, soils, and climate distinguish the proposed Bennett Valley viticultural area from the surrounding areas.

Evidence That the Name of the Area Is Locally or Nationally Known

According to the petitioner, the area is locally known as Bennett Valley. The valley is named after James N. Bennett, an 1849 immigrant settler who arrived by wagon train. His arrival coincided with the 1849 Gold Rush that brought settlers to California, helping Bennett Valley grow as an agricultural region known for grapes, apples, hay, wheat, oats, barley, and livestock. The Bennett Valley Grange Hall was built in 1873, and it still stands on Grange Road within the proposed area as noted on the USGS Santa Rosa, CA, quadrangle

map. The petition also includes an excerpt from the 1877 "Historical Atlas Map of Sonoma County," which states that if Bennett Valley "has any specialty, it is for fruit and grape culture."

The petition also offers documentation for the current usage of the proposed area's name. This includes references from a book by Don Edwards, "Making the Most of Sonoma County, A California Guide," which states, "Bennett Valley—squeezed between Taylor Mountain and the Sonoma Mountains on the west, Bennett Peak (Yulupa to the Indians) and Bennett Ridge to the east—has been ranching and farming country since the days when Missourian William Bennett settled here." The Bennett Valley Homeowner's Association's web site includes a boundary description similar to that of the proposed viticultural area. The Sonoma County telephone book has 24 business listings using the Bennett Valley name, including the Bennett Valley Union School District. The Bennett Valley School is identified on the USGS Santa Rosa, CA, quadrangle map just inside the proposed area's northwest boundary line. The petition also includes a reference to the Sonoma County government's Bennett Valley Area Plan. Only the Plan's northernmost portion, the petition notes, lies outside of the proposed viticultural area's boundaries.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

The petition states that the proposed area's boundaries are based on historical and current viticulture, geographical features, and a unique microclimate. The petition lists 24 grape growers who are historically linked with Bennett Valley agriculture. In 1862, early settler Isaac DeTurk planted a 30-acre vineyard at the base of Bennett Mountain. By 1878, the petition adds, he was producing 100,000 gallons of wine from his own and purchased grapes at his winery located within the proposed area on Grange and Bennett Valley roads.

Modern accounts referenced in the petition indicate that, around the turn of the century, phylloxera disease killed some of Bennett Valley's estimated 2,000 vineyard-acres, while Prohibition ended the balance of the Valley's wine grape industry. A resurgence of wine grape growing in Bennett Valley started in 1975, the petition notes, when the Matanzas Creek Winery planted 20 acres of grapes. The proposed area now has approximately 650 vineyard-acres. Twelve of the thirteen petition signers

are vineyard owners within the proposed area.

Evidence Relating to the Geographical Features Which Distinguish the Proposed Area From Surrounding Areas

As described in the petition, the proposed boundaries of the Bennett Valley viticultural area are based on a combination of terrain and soil similarities, a climate with a strong coastal influence in a sheltered, inland location, and the common denominator of being within the Matanzas Creek watershed.

Physical Features

Bennett Valley is surrounded on three sides by the Sonoma Mountain Range and, on the north side, by the city of Santa Rosa. The mountainous boundaries, generally defined by ridgelines, indicate the outer limits of the Matanzas Creek watershed. Taylor and Bennett Mountains provide anchors for the proposed area's western and eastern boundary, respectively, while the 1,600-foot elevation line on Sonoma Mountain defines the southern boundary. Elevations within the proposed area range from 250 to 1,850 feet, with most vineyards between the 500 and 600-foot level.

The proposed area's northwestern boundary starts at Taylor Mountain's peak and continues straight northeast, coinciding with a portion of the Sonoma Valley viticultural area boundary line. The lower northern elevations open to the Santa Rosa Valley and city of Santa Rosa, where, at the northernmost point, the boundary line turns southeast at a 65-degree angle. The northeastern and eastern boundaries, primarily a series of straight lines connecting elevation points, follow the ridgelines through the peak of Bennett Mountain that outline the eastern side of the Matanzas Creek watershed.

The southern boundary follows the 1600-foot elevation line along Sonoma Mountain's north side and then a westerly straight line to a 900-foot elevation point. The southwestern boundary uses intersections and markers, within the Matanzas Creek watershed, to close the boundary line at Taylor Mountain. Crane Canyon, on the proposed area's southwestern side, provides an opening in the mountains for the cooling coastal fogs and breezes from the Pacific coast, which, according to the petitioners, moderate the Bennett Valley's climate.

Soils

The proposed Bennett Valley viticultural area's soils vary from the surrounding areas, the petition notes, due to the different composition percentages of its predominant Goulding-Toomes-Guenoc Association. The petition adds that there are differences in the distribution of Spreckels, Laniger, Haire, and Red Hill clay loam soils between the proposed area and nearby portions of the Sonoma Valley viticultural area. It also states that the soils in the Sonoma Mountain viticultural area, other than the overlapping portion, vary from those within the proposed Bennett Valley area.

The foothills soils, comprised primarily of the Goulding-Toomes-Guenoc Association, are of a volcanic origin that include lava flows, tuff beds and sandstone, gravel, and some conglomerate, according to the petitioner. The lower slopes and valley floor soils have more variety, including some of alluvial origin. The distribution of Spreckels loam, a well drained loam with clay subsoil, the petition states, is about 24 percent in the proposed Bennett Valley area, 27 percent in the Sonoma Mountain viticultural area, and almost 42 percent in the common area that overlaps the two areas.

Climate

The proposed Bennett Valley viticultural area has a unique microclimate, resulting from its sheltered inland location and access to coastal cooling elements, according to the petition. It notes that the broad and tall Sonoma Mountain diverts the foggy, south-to-north coastal breezes of the Petaluma gap to the north and into the Crane Canyon gap. This gap, between Sonoma Mountain and Taylor Mountain, funnels the coastal fog and winds into the Bennett Valley. Rainfall amounts in the Bennett Valley area are 17 to 25 percent higher than in the areas to the immediate north and east, according to the petition, which also quotes Valley residents who state that rainfall amounts vary with elevation and proximity to the mountains and their wind patterns.

Overlaps With the Sonoma Mountain and Sonoma Coast Viticultural Areas

The proposed Bennett Valley area is almost entirely within the Sonoma Valley viticultural area. The Sonoma Mountain viticultural area, which is totally within the larger Sonoma Valley viticultural area, overlaps 13.1 percent of the proposed Bennett Valley area. A small 3.4 percent of the proposed area overlaps into the Sonoma Coast viticultural area. The Sonoma Coast and the interior Sonoma Valley viticultural areas, both within the North Coast viticultural area, share a common boundary line along Sonoma Valley's western border. This common boundary line is the site of the petitioned boundary's small overlap into the Sonoma Coast area.

The following table summarizes the proposed 8,140-acre Bennett Valley viticultural area's overlaps with other, established viticultural areas:

Viticultural area	Acres within the proposed Bennett Valley area	Percent of the proposed Bennett Valley area in overlap
Sonoma Valley only	6,796	83.5
Sonoma Mountain (within Sonoma Valley area)	1,063	13.1
Total within Sonoma Valley	7,859	96.6
Sonoma Coast	281	3.4
Grand total	8,140	100.0

The petitioner believes these overlapping acreages provide more of a transition than a definitive contrast

between the proposed and established viticultural areas.

Sonoma Valley Viticultural Area (27 CFR 9.29)

The proposed Bennett Valley viticultural area is 96.6 percent within

the Sonoma Valley viticultural area. The petitioned Bennett Valley area occupies 7,859 acres, or approximately 7 percent, of the larger Sonoma Valley viticultural area's acreage. According to the petition, the Sonoma Valley viticultural area petition included the Bennett Valley due to its similar soil and climate. The Sonoma Mountain viticultural area is totally within, and located in the western portion of, the Sonoma Valley viticultural area.

Sonoma Mountain Viticultural Area (27 CFR 9.102)

The proposed Bennett Valley viticultural area overlaps 1,063 acres (13.1 percent of its territory) of the established Sonoma Mountain viticultural area, which is itself totally within the Sonoma Valley viticultural area. The overlap is in the southeast corner of the Bennett Valley area and the northwestern portion of the Sonoma Mountain area. The overlap is seen on the Glen Ellen and Kenwood USGS maps in Sections 11 through 14, T6N, R7W. The overlap is mainly that portion of the proposed Bennett Valley viticultural area north of the 1,600-foot elevation line on Sonoma Mountain in Sections 13, 14, and 23, and the land east of the common line between Sections 15 and 14, as shown on the Glen Ellen map. The northern limit of the overlap is the 800-foot elevation line from its southern most intersection with the common line between Sections 10 and 11 to its intersection with Bennett Valley Road, as shown on the Kenwood map.

According to the petition, the overlap area between the proposed Bennett Valley and the Sonoma Mountain viticultural areas contains common geographic features, such as the Matanzas Creek watershed, similar vineyard elevations, and the "thermal belt" phenomenon that drains cold air and fog from the upper mountain slopes to the lower elevations, which moderates temperatures at the lower levels. The thermal belt phenomenon is seen in this overlap due to its proximity to the Crane Canyon wind gap, which delivers the Pacific's cooling marine influence to the proposed area.

The petition also notes strong soil similarities in this overlapping area. For example, Goulding clay loam covers 30.2 percent of the proposed Bennett Valley area, 33.4 percent of this overlapping area, and from 7.4 to 49.8 percent of other sections of Sonoma County viticultural areas. Goulding cobbly clay loam covers 18.5 percent of the Bennett Valley area, 19.0 percent of the Sonoma Mountain overlap, and

covers 10.8 to 43.1 percent of other areas.

The petition also quotes several Sonoma Mountain area grape growers who state that diverse growing conditions exist on different sides, and at various elevations, on Sonoma Mountain. Specifically, they note, the overlapping area benefits from the coastal influence and wind, which contrasts to the protected, warmer, eastern side of the mountain.

Sonoma Coast Viticultural Area (27 CFR 9.116)

The proposed Bennett Valley viticultural area overlaps approximately 281 acres (3.4 percent of its territory) of the established Sonoma Coast viticultural area. This overlapping area is in two portions on the petitioned area's west side. The first is located north of Crane Canyon Road and can be found in Sections 9 and 8, T6N, R7W, on the Cotati and Santa Rosa USGS maps. The second is located in Sections 15 and 16, T6N, R7W, on the Cotati map. This section of the Sonoma Valley and Sonoma Coast viticultural areas common boundary line spans a remote section of the Sonoma Mountains, where, according to the petitioners, determining the exact limits of the Matanzas Creek watershed might have challenged previous petitioners in drawing the two areas' boundary lines.

The petitioners originally intended to follow the Sonoma Valley area's western border and not overlap into the Sonoma Coast area. However, in the overlap north of Crane Canyon Road, the petitioners discovered that the former George N. Whitaker vineyard, a historically significant Bennett Valley vineyard, straddled the common boundary line between the Sonoma Coast and Sonoma Valley viticultural areas. The vineyard, and the immediately surrounding land, is similar to the proposed Bennett Valley viticultural area due to its drainage into the Matanzas Creek watershed, its direct receipt of the cooling marine influence from the Crane Canyon gap, and terrain and soils that are consistent with petitioned area. To avoid again dividing this vineyard between two viticultural areas, the petitioners extended their boundary line about a quarter-mile west into the Sonoma Coast viticultural area, causing the small, 281-acre overlap.

The petitioner claims the terrain, soils, and microclimate of this Sonoma Coast overlap are consistent with the proposed Bennett Valley viticultural area. The area is totally within the Matanzas Creek watershed and on the Sonoma Valley side of the dividing ridge. The elevations, from 680 to 960

feet, are consistent with the surrounding petitioned areas. The Goulding soils predominate the overlapping area and are similar to the rest of the proposed Bennett Valley area. The Crane Canyon gap gives this overlap area the same cooling marine influence as the rest of the proposed area.

Proposed Boundaries

The proposed viticultural area is in Sonoma County, California. The four approved USGS maps for determining the boundary of the proposed Bennett Valley viticultural area are the Santa Rosa Quadrangle, California—Sonoma Co., 7.5 Minute Series, edition of 1994; Kenwood Quadrangle, California, 7.5 Minute Series, edition of 1954, photorevised 1980; Glen Ellen Quadrangle, California—Sonoma Co, 7.5 Minute Series, edition of 1954, photorevised 1980; and Cotati Quadrangle, California—Sonoma Co, 7.5 Minute Series, edition of 1954, photorevised 1980.

The proposed Bennett Valley area is of an irregular five-sided shape, resembling a downward-pointing bullet, with Taylor Mountain, the city of Santa Rosa, and Bennett Mountain to the north, while the large Sonoma Mountain anchors the south side. The proposed viticultural area is totally within the North Coast viticultural area, is almost entirely within the Sonoma Valley viticultural area, with a small overlap into the Sonoma Coast viticultural area. The proposed area also overlaps a portion of the Sonoma Mountain viticultural area, which is itself totally within the Sonoma Valley area.

Public Participation

Comments Sought

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF is especially interested in comments about the small overlap into the Sonoma Coast viticultural area. This overlap departs from the common course of two established viticultural area boundary lines to avoid dividing an established vineyard that appears to meet the criteria of the Bennett Valley viticultural area. ATF is also interested in comments about the proposed area's overlap with the Sonoma Mountain viticultural area. Refer to the "Overlapping Areas" section of this

document for more detailed information.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material that a commenter considers confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Submitting Comments

By U.S. Mail: Written comments may be mailed to ATF at the address listed in the **ADDRESSES** section.

By Fax: Comments may be submitted by facsimile transmission to 202-927-8602, provided the comments: (1) Are legible; (2) are 8½" x 11" in size, (3) contain a written signature, and (4) are five pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by fax in excess of five pages will not be accepted. Receipt of fax transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

By E-Mail: Comments may be submitted by e-mail to nprm@atfhq.treas.gov. E-mail comments must: contain your name, mailing address and e-mail address, and reference this notice number. We will not acknowledge the receipt of e-mail. We will treat comments submitted by e-mail as originals.

Comments may also be submitted using the comment form provided with the online copy of this proposed rule on the ATF Internet web site at <http://www.atf.treas.gov>.

By Public Hearing: Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Reviewing Comments

You may view copies of the full comments received in response to this notice of proposed rulemaking by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202-927-7890. You may request copies of the full comments (at 20 cents per page) by writing to the ATF Reference Librarian at the above address.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web

site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library as noted above. To access online copies of the comments on this proposed rulemaking, visit <http://www.atf.treas.gov/>, and select "Regulations," then "Notices of proposed rulemaking (alcohol)," and then click on the "View Comments" link for this notice.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

ATF certifies that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

ATF has determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is N. A. Sutton, Regulations Division (San Francisco), Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding Section 9.____ to read as follows:

§ 9.____ Bennett Valley

(a) *Name.* The name of the viticultural area described in this section is "Bennett Valley".

(b) *Approved maps.* The appropriate maps for determining the boundary of the Bennett Valley viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

- (1) Santa Rosa Quadrangle, CA—Sonoma Co. 1994
- (2) Kenwood Quadrangle, CA 1954, photorevised 1980
- (3) Glen Ellen Quadrangle, CA—Sonoma Co. 1954, photorevised 1980
- (4) Cotati Quadrangle, CA—Sonoma Co. 1954, photorevised 1980

(c) *Boundary.* The Bennett Valley viticultural area is entirely within Sonoma County, California, and is located northwest of the peak of Sonoma Mountain and southeast of the city of Santa Rosa. The point of beginning is the peak of Taylor Mountain (BM 1401), Section 6, T6N, R7W (Santa Rosa Quadrangle).

(1) Then proceed straight northeast to the intersection of the common line between Sections 31 and 32 and the 560-foot elevation line, T7N, R7W, and continue straight northeast at the same angle, crossing the Bennett Valley Golf Course and Matanzas Creek, to a point on the 500-foot elevation line approximately 400 feet north of the southern boundary of Section 20, T7N, R7W (Santa Rosa Quadrangle);

(2) From that point, proceed straight southeast to the center peak of the three unnamed peaks above the 1,100-foot elevation line, located approximately 1,600 feet southwest of Hunter Spring, in Section 28, T7N, R7W (Santa Rosa Quadrangle);

(3) Then proceed straight east-southeast to a 1,527-foot peak in the southeast corner of Section 28, T7N, R7W (Santa Rosa Quadrangle);

(4) Then proceed straight southeast to Bennett Mountain's 1,887-foot peak, Section 34, T7N, R7W (Kenwood Quadrangle);

(5) Then proceed straight southeast to the 1,309-foot peak located northwest of a water tank and approximately 400 feet north of the southern boundary of Section 35, T7N, R7W (Kenwood Quadrangle);

(6) Then proceed straight south-southeast to the 978-foot peak in the northeast quadrant of Section 11, T6N, R7W, and continue straight south-southeast approximately 600 feet to the "T" intersection of two unimproved roads located on the common boundary line between Sections 11 and 12, T6N, R7W (Kenwood Quadrangle);

(7) Then proceed south along the north-south unimproved road to its intersection with Sonoma Mountain Road, Section 13, T6N, R7W, and continue straight south to the 1,600-foot elevation line, Section 13, T6N, R7W (Glen Ellen Quadrangle);

(8) Then proceed west along the meandering 1,600-foot elevation line to the point where it crosses the common line between Sections 22 and 23, T6N, R7W (Glen Ellen Quadrangle);

(9) Then proceed straight west-northwest to the point where the 900-foot elevation line crosses the common line between Sections 15 and 16, T6N, R7W, approximately 500 feet north of the southwest corner of Section 15 (Cotati Quadrangle);

(10) Then proceed straight northwest to intersection of Grange Road (known as Crane Canyon Road to the west) and the southern boundary of Section 9, and continue straight west along that section boundary to the southwest corner of Section 9, T6N, R7W (Cotati Quadrangle);

(11) Then proceed straight north-northwest to the 961-foot peak on the east side of Section 8, T6N, R7W, (Santa Rosa Quadrangle) and

(12) From that peak, continue straight northwest to the peak of Taylor Mountain, returning to the point of beginning.

Dated: November 8, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02-29590 Filed 11-21-02; 8:45 am]

BILLING CODE 4810-31-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 164-1164; FRL-7412-3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri. This revision pertains to changes to the solvent metal cleaning rule applicable to the St. Louis, Missouri, area. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by December 23, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 8, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02-29610 Filed 11-21-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 166-1166; FRL-7411-9]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to Missouri rule "Submission of Emission Data, Emission Fees, and Process Information." This revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's air program rule revision.

In the final rules section of this **Federal Register** issue, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse 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 action. EPA 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: Comments on this proposed action must be received in writing by December 23, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 12, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02-29608 Filed 11-21-02; 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-N3]
RIN 0938-AL13
Medicare Program; 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: In accordance with section 10(a) of the Federal Advisory Committee Act, this document announces additional public meetings of the Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The Committee was mandated by section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA).

DATES: The next two negotiated rulemaking committee meetings will be held January 6 and 7, 2003; and February 10 and 11, 2003 from 9 a.m. to 5 p.m. e.s.t.

These meetings are open to the public, and subsequent meetings will be announced in the **Federal Register**.

ADDRESSES: The Committee meetings will be held at the Hilton Pikesville at 1726 Reisterstown Road, Baltimore, MD 21208, (Telephone 410-653-1100). Any subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT:

Theresa Linkowich, (410) 786-9249 (General inquiries concerning prosthetics and custom-fabricated orthotics), 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: We published a document in the **Federal Register** on July 26, 2002 (67 FR 48839), announcing the establishment of the

negotiated rulemaking committee 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 document also announced dates for the Committee's first two meetings on October 1 to 3, 2002, and October 29 to 31, 2002.

Through face-to-face negotiations, these meetings will help the Committee 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. Detailed information is available on the CMS Internet Home Page: <http://cms.hhs.gov/faca/prosthetic/> or by calling the Federal Advisory Committee Hotline at (410) 786-9379.

The agendas for the January 5 and 6, 2002 and February 10 and 11, 2002 meetings will cover the following:

1. Review of the October 29 to 31 minutes (January 5 and 6) and review of the January 5 and 6 minutes (February 10 and 11).
2. Workgroup presentations on orthotics and prosthetics.
3. Consensus on workgroup items.
4. Development of new workgroups (as applicable).
5. Presentation by the American Society of Hand Therapists (January 5 and 6).
6. Public comment period.

Public Participation

All interested parties are invited to attend these public meetings, but attendance is limited to the space available. No advance registration is required. Seating will be available on a first-come first-served basis. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Theresa Linkowich, at e-mail address mlinkowich@cms.hhs.gov, or call (410) 786-9249 at least 10 days before the meeting. 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.

Interested parties can file statements with the Committee. Mail written statements 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.

Additional Meetings

Meetings will be held as necessary. 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: November 19, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02-29795 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
42 CFR Parts 412, 413, 476, and 484
[CMS-3055-P]
RIN 0938-AK68
Medicare Program; Photocopying Reimbursement Methodology
AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the rate of reimbursement for expenses incurred by prospective payment system (PPS) hospitals for photocopying medical records requested by Quality Improvement Organizations (QIOs), formerly known as Utilization and Quality Control Peer Review Organizations (PROs). We would increase the rate from 7 cents per page to 12 cents per page, in accordance with the formula for calculating this rate to reflect inflationary changes in the labor and supply cost components of the formula.

This proposed rule would also provide for the periodic review and adjustment of the per-page reimbursement rate to account for

inflation and changes in technology. The methodology for calculating the per-page reimbursement rate would remain unchanged.

We also propose to provide for the payment of the expenses of furnishing photocopies to QIOs, to other providers subject to a PPS (for example, skilled nursing facilities and home health agencies), in accordance with the rules established for reimbursing PPS hospitals for these expenses.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 2003.

ADDRESSES: In commenting, please refer to file code CMS-3055-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-3055-P, PO Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or 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.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Valerie Mattison Brown, (410) 786-5958.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, 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, please call (410) 786-9994.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 (or toll-free at 1-888-293-6498) or by faxing to (202) 512-2250. The cost for each copy is \$9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The web site address is: <http://www.access.gpo.gov/nara/index.html>.

I. Background

Section 1866(a)(1)(F) of the Social Security Act (the Act) requires a hospital, as a condition of Medicare participation, to enter into an agreement with a quality improvement organization (QIO), for the peer review of Medicare services provided by the hospital. (**Note:** QIOs were formerly known as peer review organizations (PROs). We published a final rule with comment period on May 24, 2002 (67 FR 36539) changing the name to QIOs.) Our regulations at 42 CFR 476.78 provide that health care facilities that submit Medicare claims must cooperate in the conduct of QIO reviews, including providing the QIO with information necessary to its determinations. This often includes providing the QIO with photocopies of patients' medical records.

We published a final rule on October 20, 1992 in the **Federal Register** (57 FR 47779), following notice-and-comment rulemaking, which established a formula for calculating the rate of reimbursement for these photocopy costs incurred by hospitals. Using this formula, we set the rate at 7 cents per page. The regulation requires us to determine a fixed payment amount per page by adding per-page labor costs and per-page supply costs. The regulation also provides for Medicare payment for the costs of first class postage for mailing records to QIOs. As discussed in detail in the October 20, 1992 final rule (57 FR 47779), the payment established by § 476.78 represents an additional payment to hospitals under the prospective payment system (PPS) for photocopy costs. Payment for the equipment and overhead costs associated with furnishing the QIO with

required documentation is made under other Medicare payment provisions for capital-related costs and inpatient operating costs.

The formula for calculating the per-page reimbursement rate for photocopies is set forth at § 476.78(c), which provides:

Photocopying reimbursement methodology for prospective payment system hospitals. Hospitals subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the hospitals' responsibility to the QIOs to provide photocopies of requested hospital records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by CMS as follows:

(1) *Step one.* CMS adds the annual salary of a photocopy machine operator and the costs of fringe benefits as determined in accordance with the principles set forth in OMB circular A-76.

(2) *Step two.* CMS divides the amount determined in paragraph (c)(1) of this section by the number of pages that can be reasonably expected to be made annually by the photocopy machine operator to establish the labor cost per page.

(3) CMS adds to the per-page labor cost determined in paragraph (c)(2) of this section the per-page costs of supplies.

Using this formula we established the per-page rate of 7 cents in the October 20, 1992 final rule. The validity of this rule and its reimbursement methodology were challenged in a certified class action by Medicare-participating hospitals, in the U.S. Court of Appeals for the Ninth Circuit. *Queen of Angels/ Hollywood Presbyterian Medical Center v. Shalala*, 65 F.3d 1472, 1476 (9th Cir. 1995). The Court of Appeals upheld the validity of our photocopy reimbursement methodology and sustained the lawfulness of the 7 cents per page rate established in the rule.

Due to increases in labor and supply costs, we are proposing to increase the reimbursement rate from 7 cents per page to 12 cents per page in accordance with the established court-approved methodology set forth in § 476.78(c).

Current Photocopy Reimbursement Rate

Under the current regulation, we apply a uniform per-page rate on a nationwide basis to all PPS hospitals that have QIO agreements. We base the calculation on labor and supply costs. The calculation in the current rule, as discussed in the preamble to the October 20, 1992 rule, is based on the following:

- An operator will copy approximately 364,320 pages annually.

- The salary level of an operator is equivalent to a GS-5 experienced midlevel secretary (\$17,686) plus 27.9 percent fringe benefits (\$4,934) for a total salary of \$22,620.

- Paper costs are 0.5 cents per page (\$25 per case of paper with 5,000 sheets in a case).

- Toner and developer costs are 0.5 cents per page.

- The total cost per page is 7 cents.

II. Provisions of the Proposed Regulations

We propose to increase the rate of QIO-related photocopy reimbursement from 7 cents to 12 cents per page. We calculated this rate by updating the salary, fringe benefits, and supply figures used in the October 20, 1992 final rule. In accordance with the methodology at § 476.78(c), we considered the following factors in calculating the proposed rate: (1) The labor costs associated with photocopying and (2) the costs of supplies.

A. Labor Costs

Labor costs were calculated consistent with the methodology at § 476.78(c), first, by adding the annual salary of a photocopy machine operator with the costs of fringe benefits, and second, by dividing that sum by the number of pages that can reasonably be expected to be made in a year.

B. Annual Salary of a Photocopy Machine Operator

In the October 20, 1992 rule, we adopted the salary level for an experienced (GS-5) midlevel secretary in the Federal government as representative of that of a photocopy machine operator. Use of this figure approximated or exceeded the actual salary information for individuals performing these tasks that had been submitted by various commenters. Furthermore, we determined that use of this salary level yielded payments that were more than adequate to ensure a sufficient skill level. The annual salary of \$17,686 used in the October 20, 1992 rule was derived from the U.S. Office of Personnel Management's 1992 General Schedule.

In this proposed rule, we would continue to deem the salary of a Federal GS-5 midlevel secretary as representative of a photocopy operator's salary; however, we would update the figure to take into account increases in the payment rate of a midlevel secretary. Thus, we are using the GS-5 annual salary of \$28,727 derived from the U.S. Office of Personnel Management's 2002

General Schedule to calculate the revised rate.

C. Fringe Benefits

In the October 20, 1992 final rule, we ascribed the fringe benefits of an employee to be 27.9 percent of the employee's salary, which was the standard percentage dictated by the cost principles set forth in the Office of Management and Budget (OMB) Circular A-76. While there may be other yardsticks to measure this component of costs, we find this to be a reasonable resource since the thrust of this OMB circular is to help the government compare potentially incurred costs to determine whether the costs can be more economically incurred internally or through contract with a commercial source. Therefore, we continue to use OMB Circular A-76 to calculate the annual fringe benefit cost. Accordingly, fringe benefits were calculated in this proposed rule based on 29.7 percent of the GS-5 salary as outlined in the OMB Circular A-76 Transmittal Memorandum 19—FY 2000 estimate. Thus, the annual fringe benefit cost is \$8,532 ($\$28,727 \times 29.7$ percent).

D. Number of Pages Copied Annually

In this proposed rule, we are using 364,320 pages per year in the calculation of the annual labor cost. In the October 20, 1992 rule, we determined that 364,320 was the number of pages that could reasonably be expected to be copied in a year. Earlier, in the proposed rule "Changes to Peer Review Organizations Regulations", published on March 16, 1988 at 53 FR 8654, we had proposed the use of 748,000 pages per year in the calculation of the annual labor cost. This initial figure was determined based on copying documents at a rate of six pages per minute for each hour in an 8 hour day, 5 days a week, 52 weeks per year. The estimate was based on hand feeding of documents into the photocopying machine for duplication, although we recognized that there are many photocopying tasks that may be accomplished through automatic feeds. Automatic feeds greatly increase the number of pages that can be generated by a machine on an hourly basis, and as a result, greatly decrease the cost of photocopying per page.

In response to comments received on the March 16, 1988 proposed rule (53 FR 8654), we revised the 748,000 figure in the October 20, 1992 final rule to account for time spent by the photocopy machine operator in search and retrieval tasks, and time away from work on annual vacation, sick, and holiday leave. This resulted in a reduction from

748,000 to 364,320 in our estimate of the number of pages that may be reasonably expected to be made annually, and a corresponding increase in the per-page labor rate.

We are unaware of any significant changes in technology since the October 20, 1992 final rule (57 FR 47779) that would lead to either a significant decrease or increase in the annual number of pages that may be copied. Nor are we aware of any changes that would significantly increase or decrease the time allocated to search and retrieval tasks. Therefore, we continue to use the 364,320 figure to calculate the per-page labor cost in this proposed rule.

E. Calculation of Per-Page Labor Costs

To determine the per-page labor cost, the total of salary (\$28,727) and fringe benefits (\$8,532) costs, which amount to \$37,259, was divided by 364,320 pages, the number of copies made in a year, resulting in an annual labor cost per page of 10 cents ($\$37,259/364,320$ pages).

F. Supply Costs

In the October 20, 1992 final rule, supply costs were calculated based on 0.5 cents per page for paper and 0.5 cents per page for toner and developer. The paper cost was based on a cost of \$25 per case of paper with 5,000 sheets in a case. The costs of toner and developer vary widely depending on the type of photocopy machine used. However, based on comments from hospitals and a large hospital association, it was determined at that time that a reasonable amount for toner and developer was 0.5 cents per page.

The total proposed supply cost is 2.3 cents per page. This is based on a per-page paper cost of 0.5 cents and a developer and toner cartridge cost of 1.8 cents per page. The paper costs were calculated based on \$23 per case of paper with 5,000 sheets in a case. This equates to 0.5 cents per page ($\$23/5,000$).

As previously stated, in the October 20, 1992 rule the toner and developer costs of 0.5 cents per page were determined on the basis of comments received on the proposed rule. In this rule, we have used an objective methodology to calculate the per-page cost for toner and developer that can also be used in future updates. We calculated these costs using estimates of the costs for toner cartridges and developer drums contained in the GSA supply catalogue, and on the basis of a photocopy machine producing 364,320 pages annually.

G. Payment Rate Per Page

Consistent with § 476.78(c)(3), the payment rate per page is the total of the per-page labor cost and the per-page supply cost, which is equivalent to 12 cents. The established calculation methodology actually results in a cost of 12.3 cents per page, however, consistent with CMS policy and generally accepted mathematics principles, we chose to round down to 12 cents. We believe this decision is both reasonable and supportable, based on the fact that the higher amount substantially exceeds all published OMB inflation indexes, including the CPI-Wage index (photocopying expense is largely comprised of labor costs).

H. Future Updates to Rate of Photocopy Reimbursement

In addition to updating the rate of reimbursement for photocopies, we also propose to amend the existing regulation to permit the rate to be adjusted without undergoing notice-and-comment rulemaking each time it needs to be adjusted to reflect inflationary or technology changes.

We intend to review and adjust the rate periodically in accordance with the same factors considered in establishing the rate in the October 20, 1992 final rule and the updated rate in this proposed rule. This review will include an examination of the labor and supply components of the formula, and we will update the rate as necessary to account for significant inflationary changes to these components.

Absent some compelling reason, in future updates, we will continue to deem the salary and fringe benefits of a Federal government GS-5 midlevel secretary as representative of the salary and fringe benefits of a photocopy machine operator and use those values to calculate the reimbursement rate. Also, absent some compelling reason or major technological change that would lead to a significant increase or decrease in the number of pages that can be made annually, we will not change the number of pages used in calculating the rate.

I. Reimbursement to Other PPS Providers of the Cost of Photocopying

We also propose to provide for the payment of the expenses of furnishing photocopies to QIOs, to other providers subject to a PPS (for example, skilled nursing facilities (SNFs) and home health agencies (HHAs)), in accordance with the rules established at § 476.78 for reimbursing PPS hospitals for these expenses.

Current regulations do not address reimbursement for providers other than

hospitals for costs of photocopying medical records in cooperation with QIO review activities because in the past QIO review of providers other than hospitals was relatively insignificant. To the extent that this review activity took place, it was minimal, and the related costs were included on the provider's cost report. SNFs, HHAs, and other providers have recently converted from the cost-based reimbursement system to a PPS. Because QIO review of these providers has been minimal or nonexistent, costs related to this activity are not adequately reflected in the base PPS rate. Therefore, we believe it is appropriate to provide for a means of paying for these costs when they occur. To accomplish this change, we propose to replace the more narrow term "hospitals" with "providers," in § 476.78(b)(2) and (c), to include other providers subject to a PPS.

Additionally, we propose revising the payment provisions for SNFs and HHAs by adding a paragraph at § 413.355 and § 484.265, that authorizes reimbursement for the costs of photocopying and mailing medical records required for QIO review, to SNFs and HHAs.

We also propose amending § 476.78(d) to provide that, as with other disputes regarding Medicare payment to providers, disputes concerning payments for costs related to QIO review under § 476.78 and the other payment provisions of the Medicare statute and regulations must be presented in accordance with the administrative and judicial review requirements of section 1878 of the Act and subpart R of 42 CFR part 405.

III. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, agencies 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, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the

affected public, including automated collection techniques.

Section 476.78 of this regulation contains information collection requirements. In summary, § 476.78 requires providers to submit information to the QIO during the conduct of a QIO review. Because this information is collected during the conduct of an audit, investigation, and/or an administrative action, we believe these collection requirements are not subject to the PRA as stipulated under 5 CFR 1320.4.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies directly to the following:

Centers for Medicare and Medicaid Services, Office of Information Services, Standards and Security Group, Division of CMS Enterprise Standards, Room N2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850. Attn: John Burke CMS-3055-P; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, CMS Desk Officer, CMS-3055-P.

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 proposed rule as required by Executive Orders 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96-354).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when 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 rules that constitute significant regulatory action, including rules that have an economic effect of \$100 million

or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved.

The 53 separate QIO contracts are awarded on a staggered 3-year basis. Current sixth scope of work contracts provide photocopy reimbursement costs of 7 cents per page. The total dollars budgeted were \$8.6 million per year and the 3-year costs were \$25.9 million. We estimate by the time this regulation is published in final, 19 QIOs will have completed their 6th round contracts and the other 34 will have less than 153 months (combined) out of a total of 636 months (for all 53 QIOs) remaining in the final year of their 6th round contracts. This translates to 24 percent of the final 6th round year. As such, we project this regulation will increase the costs in the last (*i.e.*, current) year of the 6th scope of work by \$1.5 million above the previous budgeted level of \$8.6 million, to a total of \$10.1 million. However, in future years—based on the full 12 months and all 53 QIOs under contract—the increase will be nearly \$6.2 million annually.

Thus, we have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of \$100 million or more per year. We have also determined that it does not otherwise constitute significant regulatory action.

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 governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$5 million to \$25 million or less annually (see 65 FR 69432). Individuals and States are not included in the definition of a small entity.

We generally prepare a regulatory flexibility analysis that is consistent with the RFA unless we certify that a rule will not have a significant impact on a substantial number of small entities. We have not prepared an analysis for the RFA because we have determined, and certify, that this proposed rule would have no significant economic impact on small entities. The proposed regulation would not impose any economic or operational regulatory burdens on small entities. The regulation would only assist providers in performing the tasks required under the QIO program sixth scope of work, by increasing the reimbursement for providing copies of documents to the QIOs.

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 have not prepared an analysis for section 1102(b) of the Act because we have determined that this proposed regulation would not have a significant impact on the operations of small rural hospitals for the reasons stated above in our discussion of the RFA.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million or more. We have determined that this proposed rule would not result in such an expenditure. Rather, the proposed rule would benefit providers by increasing the photocopy reimbursement rate.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 476

Grant programs—health, Health care, Health facilities, Health professions, Quality Improvement Organizations (QIO), reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, 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 to read as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 412.115, revise paragraph (c) to read as follows:

§ 412.115 Additional payments.

* * * * *

(c) *QIO photocopy and mailing costs.* An additional payment is made to a hospital in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

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), 1395f(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Add a new § 413.355 to read as follows:

§ 413.355 Additional payment: QIO photocopy and mailing costs.

An additional payment is made to a skilled nursing facility in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 476.78, revise the introductory text to paragraph (b); revise paragraphs (b)(2), (b)(4), and the introductory text to paragraph (c); add new paragraph (c)(4);

and revise paragraph (d) to read as follows:

§ 476.78 Responsibilities of health care providers.

* * * * *

(b) *Cooperation with QIOs.* Health care providers that submit Medicare claims must cooperate in the assumption and conduct of QIO review. Providers must—

* * * * *

(2) Provide patient care data and other pertinent data to the QIO at the time the QIO is collecting review information that is required for the QIO to make its determinations. The provider must photocopy and deliver to the QIO all required information within 30 days of a request. QIOs pay providers paid under the prospective payment system for the costs of photocopying records requested by the QIO in accordance with the payment rate determined under the methodology described in paragraph (c) of this section and for first class postage for mailing the records to the QIO. When the QIO does postadmission, preprocedure review, the facility must provide the necessary information before the procedure is performed, unless it must be performed on an emergency basis.

* * * * *

(4) When the provider has issued a written determination in accordance with § 412.42(c)(3) of this chapter that a beneficiary no longer requires inpatient hospital care, it must submit a copy of its determination to the QIO within 3 working days.

* * * * *

(c) *Photocopying reimbursement methodology for prospective payment system providers.* Providers subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the providers' responsibility to the QIOs to provide photocopies of requested provider records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by CMS as follows:

* * * * *

(4) CMS will periodically review the photocopy reimbursement rate to ensure that it still accurately reflects provider costs. CMS will publish any changes to the rate in a Federal Register notice.

(d) *Appeals.* Reimbursement for the costs of photocopying and mailing records for QIO review is an additional payment to providers under the prospective payment system, as specified in §§ 412.115, 413.355, and

484.265 of this chapter. Thus, appeals concerning these costs are subject to the review process specified in part 405, subpart R of this chapter.

PART 484—HOME HEALTH SERVICES

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)) unless otherwise indicated.

2. Add a new § 484.265 to read as follows:

§ 484.265 Additional payment.

An additional payment is made to a home health agency in accordance with § 476.78 of this chapter for the costs of photocopying and mailing medical records requested by a QIO.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 27, 2002.

Thomas A. Scully,

Administrator, Center for Medicare & Medicaid Services.

Approved: August 8, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02-29076 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS-1022-P]

RIN 0938-AJ36

Medicare Program; Hospice Care Amendments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise existing regulations that govern coverage and payment for hospice care under the Medicare program. These revisions are required by the Balanced Budget Act of 1997 (BBA), the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA).

The BBA made changes to the time frame for completion of a physician's certification for admission of a patient;

the duration of benefit periods; the requirement that hospices make certain services available on a 24-hour basis; the required core services; the coverage of services specified in a patient's plan of care; and the payment of claims according to area. The BBA also established hospice payment rates for Federal fiscal years 1998 through 2002. BBRA amended those rates. BIPA further amended those rates and clarified the physician certification rule.

This rule would also add to existing regulations certain established Medicare hospice policies that currently are available only in policy memoranda. These policies clarify the regulations regarding the content of the certification of terminal illness and the admission to, and discharge from, a hospice.

This rule does not address the requirement for hospice data collection, the changes to the limitation of liability rules, or the changes to the hospice conditions of participation that were included in the BBA.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 2003.

ADDRESSES: In commenting, please refer to file code CMS-1022-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-1022-P, Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 443-G, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 7500 Security Boulevard, Baltimore, Maryland 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:

Thomas Saltz, (410) 786-4480 or Carol Blackford, (410) 786-5909.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, 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, phone (410) 786-9994.

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I. Background

A. Hospice Care

Hospice care is an approach to health care that recognizes that the impending death of an individual warrants a change in focus from curative care to palliative care, that is, relief of pain and other symptoms. The emphasis of hospice care is on the control of pain and the furnishing of services that enable the beneficiary to remain at home as long as possible with minimal disruption to normal activities. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through the use of a broad

spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as the unit of care.

B. Medicare Hospice Before the Balanced Budget Act of 1997

The Balanced Budget Act of 1997 changed and clarified numerous aspects of the Medicare hospice benefit including, the length of available benefit periods, the amount of annual updates, how local payment rates are determined, the time frame for physician certification, and what is considered a covered Medicare hospice service. Before explaining each change in detail, it is important to understand how the Medicare hospice benefit was structured prior to the BBA of 1997.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. Beneficiaries are eligible to elect the Medicare hospice benefit if they are eligible for Medicare Part A; are certified as terminally ill by their personal physician, if they have one, and by the hospice medical director; and elect to receive hospice care from a Medicare-certified hospice. Section 1861(dd)(3)(A) of the Act defines terminally ill as a medical prognosis with a life expectancy of 6 months or less. This definition was clarified to provide for a life expectancy of "6 months or less if the illness runs its normal course" when we amended 42 CFR 418.3 in our December 11, 1990 final rule with comment period titled "Hospice Care Amendments: Medicare" (55 FR 50834).

A Medicare beneficiary who has elected the hospice benefit can receive care for specific lengths of time referred to as benefit periods. Under the Tax Equity and Fiscal Responsibility Act of 1982, hospice care was made available in three distinct benefit periods, the first two lasting 90 days, and the third lasting 30 days. The total amount of Medicare hospice coverage was 210 days. Because of the scientific difficulty in making a prognosis of 6 months or less, the 210-day limit was repealed by the Medicare Catastrophic Coverage Repeal Act of 1989 for services furnished on or after January 1, 1990. The benefit periods were restructured into two periods of 90 days duration, one period of 30 days duration, and a fourth period of unlimited duration. If a

beneficiary voluntarily left the program or was discharged from it, he or she forfeited the remaining days in the benefit period. If this occurred during the fourth benefit period, the beneficiary could never again receive the Medicare hospice benefit. A beneficiary in the fourth benefit period who became ineligible for hospice care services because he or she no longer met the eligibility requirements would return to normal Medicare coverage and would never be eligible for the Medicare hospice program, even if his or her condition once again became terminal. This provision was amended by the BBA, as discussed below.

Once a patient elects Medicare hospice care, the patient gives up the right to have Medicare pay for hospice care furnished by any hospice provider other than the one that he or she has selected, unless the selected hospice provider arranges for services to be furnished by another provider or if the patient elects to change providers. Also during the benefit period, the beneficiary gives up the right to receive any other Medicare payment for services that are determined to be related to his or her terminal illness or other related conditions or that are duplicative of hospice care. Medicare will continue to pay for a beneficiary's covered medical needs unrelated to the terminal condition.

The Medicare hospice benefit includes nursing services, medical social services, physician services, counseling services including dietary and bereavement counseling, short-term inpatient care including respite care, medical appliances and drugs, home health aide and homemaker services, physical therapy, occupational therapy, and speech-language pathology services. Medicare-certified hospices furnish care using an interdisciplinary team of people who assess the needs of the beneficiary and his or her family and develop and maintain a plan of care that meets those needs.

Under section 1814(i) of the Act, Medicare payment for hospice care is based on one of four prospectively determined rates that correspond to four different levels of care for each day a beneficiary is under the care of the hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. The prospective payment rates are updated annually and are adjusted by a wage index to reflect geographic variation. The payment rules are in our regulations at part 418, subpart G, "Payment for Hospice Care."

II. Hospice Provisions of the Balanced Budget Act of 1997, the Balanced Budget Refinement Act of 1999, and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

As mentioned above, the Balanced Budget Act of 1997 (BBA) included a number of provisions affecting the Medicare hospice benefit. Additionally, the Balanced Budget Refinement Act (BBRA) of 1999 and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 made some additional changes to the Medicare hospice benefit. This section will explain each change in detail and describe how these changes have been implemented. All of the BBA hospice provisions were implemented through a Program Memorandum (PM A-97-11) released in September 1997, which addresses all of the hospice-related BBA provisions, except the requirement for hospice data collection, the changes to the limitation of liability rules, the provision allowing contracting with physicians, and the new waivers for certain staffing requirements.

The provision allowing contracting with physicians and the new waivers for certain staffing requirements will be included in a proposed regulation to revise the hospice conditions of participation, which may be published in the near future. The limitation of liability rule changes were implemented through the Program Memorandum issued in September 1997. A hospice cost report for the hospice data collection was developed and issued in April 1999.

A. Payments for Hospice Services (Section 4441 of BBA)

Section 4441(b) of the BBA amended section 1814(i) of the Act to require hospice management to submit cost data for each fiscal year beginning with fiscal year 1999. A hospice cost report to collect this information was developed and issued in April 1999. To allow hospices enough time to prepare for the new requirement, the implementation of the hospice cost report was delayed until cost reporting periods beginning on or after April 1, 1999.

B. Payment for Home Hospice Care Based on Location Where Care Is Furnished (Section 4442 of the BBA)

Section 4442 of the BBA amended section 1814(i)(2) of the Act, effective for services furnished on or after October 1, 1997, to require that hospices submit claims for payment for hospice care furnished in an individual's home only on the basis of the geographic

location at which the service is furnished. Previously, local wage index values were applied based on the geographic location of the hospice provider, regardless of where the hospice care was furnished. Hospices were able to inappropriately maximize reimbursement by locating their offices in high-wage areas and actually delivering services in a lower-wage area. Applying the wage index values for rate adjustments on the geographic area where the hospice care is furnished would provide a reimbursement rate that is a more accurate reflection of the wages paid by the hospice for the staff used to furnish care.

C. Hospice Care Benefit Periods (Section 4443 of the BBA)

Section 4443 of the BBA amended sections 1812(a)(4) and 1812(d)(1) of the Act to provide for hospice benefit periods of two 90-day periods, followed by an unlimited number of 60-day periods. This amendment changed the previous hospice care benefit periods. Each period requires a physician to certify at the beginning of the period that the individual has a terminal illness with a prognosis that the individual's life expectancy is 6 months or less, should the illness run its normal course. Though it continues to be true that the remaining days in a benefit period are lost once a beneficiary revokes election of the hospice benefit or is discharged from the hospice, the restructured benefit periods will allow the beneficiary, or the hospice, to make this type of decision without placing the beneficiary at risk of losing hospice benefit periods in the future.

Section 4449 of the BBA indicated that the benefit period change applied to the hospice benefit regardless of whether or not an individual had made an election of the benefit period before the date of enactment. Therefore, beneficiaries who elected hospice before the BBA, and who, after the passage of the BBA, are discharged from hospice care because they are no longer terminally ill, could avail themselves of the benefit at some later date if they should become terminally ill again and otherwise meet the requirements of the Medicare hospice benefit. If the beneficiary had been discharged during the initial 90-day period, he or she would enter the benefit in the second 90-day period. If the discharge took place during the final 90-day period or any subsequent 60-day period, the beneficiary would enter the benefit in a new 60-day period. A beneficiary who had been discharged from hospice during the fourth benefit period before the enactment of the BBA would be

eligible to access the benefit again, if certified as being terminally ill, and would begin in a new 60-day period. The 90-day periods would not be available again, as amended section 1812(d)(1) of the Act still provides only for two 90-day periods during an individual's lifetime. There is no limit on the number of 60-day periods available as long as the beneficiary meets the requirements for the hospice benefit.

D. Other Items and Services Included in Hospice Care (Section 4444 of the BBA)

Section 1861(dd)(1) of the Act lists the specific services covered under the Medicare hospice benefit. Because the hospice provider is responsible for the palliation and management of the patient's terminal illness, it has always been Medicare's policy that Medicare hospice includes not only those specific services listed in Section 1861(dd)(1) of the Act but also any service otherwise covered by Medicare that is needed for the palliation and management of the terminal illness. Section 4444 of the BBA reiterates this policy by amending Section 1861(dd)(1) of the Act.

A new subparagraph "I" has been added to the list of covered hospice services in section 1861(dd)(1) of the Act, effective April 1, 1998. This new provision states that any other service that is specified in the plan of care, and for which payment may otherwise be made under Medicare, is a covered hospice service. As explained, this change underscores our previous construction of the law as requiring that the hospice is responsible for furnishing any and all services indicated as necessary for the palliation and management of the terminal illness, and related conditions, in the plan of care. A Medicare beneficiary who elects hospice care gives up the right to have Medicare pay for services related to the terminal illness, or related conditions, outside of the hospice benefit. Section 1861(dd)(1) of the Act contains a list of services and therapies covered under the Medicare hospice benefit. This list does not include services like radiation therapy, which are often furnished by hospices for palliative purposes. This change clarifies that these additional necessary services are covered under the hospice benefit and cannot be billed separately to Medicare.

E. Extending the Period for Physician Certification of an Individual's Terminal Illness (Section 4448 of the BBA)

Section 4448 of the BBA amended section 1814(a)(7)(A)(i) of the Act to eliminate the specific statutory time frame for the completion of a

physician's certification of terminal illness for admission to a hospice for the initial 90-day benefit period and to require only that certification be done "at the beginning of the period." A literal interpretation of "at the beginning of the period," that is, on the first day of the benefit period, would produce time frames that are more stringent than previous requirements. However, it appears that the congressional intent of this change was to give us the discretion, as we currently have with home health certifications, to require instead that hospice certifications be on file before a Medicare claim is submitted. Thus, section 4448 is titled "Extending the Period for Physician Certification of an Individual's Terminal Illness."

Before the BBA, hospices were required to obtain, no later than 2 calendar days after hospice care was initiated, written certification that a person had a prognosis of a terminal illness with a life expectancy of 6 months or less. For the first benefit period, if the written certification could not be obtained within the 2 calendar days following the initiation of hospice care, a verbal certification could be made within 2 days following the initiation of hospice care, with a written certification not later than 8 calendar days after care was initiated. For subsequent benefit periods, written certification was required no later than 2 calendar days after the first day of each benefit period.

The new certification requirements also apply to individuals who had been previously discharged during a fourth benefit period and are being certified for hospice care again to begin in a new 60-day benefit period. Also, due to the restructuring of the benefit periods, any individual who revoked, or was previously discharged from, the hospice benefit, and then reelects to receive the hospice benefit in the next available benefit period, will need to be recertified as if entering the program in an initial benefit period. This means that the hospice must obtain verbal certification of terminal illness no later than 2 days after care begins, and written certification before the submission of a claim to the fiscal intermediary.

F. Effective Date (Section 4449 of the BBA)

The provisions of the BBA discussed above, unless noted otherwise, became effective for services furnished on or after the date of enactment of the BBA, or August 5, 1997. Section 4444, the other services provision, was effective on April 1, 1998.

G. Clarification of the Physician Certification Requirement (Section 322 of BIPA)

Section 322 of BIPA amended section 1814(a) of the Act by clarifying that the certification of an individual who elects hospice " * * shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness." The amendment clarifies that the certification is based on a clinical judgment regarding the usual course of a terminal illness, and recognizes the fact that making medical prognostications of life expectancy is not always exact. This amendment at section 322(b) of BIPA clarifies and supports our current policy, which we are proposing to add to our regulations. The policy came about in response to Operation Restore Trust (ORT) and is discussed later in section III. B of this preamble. Briefly, ORT found that certification and recertification occurred without the documentation that would support the terminal illness prognosis. Accordingly, in 1995, we issued program memoranda requiring clinical findings and other documentation that support the medical prognosis. This documentation must accompany a certification and be filed in the patient's medical record.

We recognize that medical prognostications of life expectancy are not always exact, but the amendment regarding the physician's clinical judgment does not negate the fact that there must be a basis for a certification. A hospice needs to be certain that the physician's clinical judgment can be supported by clinical findings and other documentation that provide a basis for the certification of 6 months or less if the illness runs its normal course. A mere signed certification, absent a medically sound basis that supports the clinical judgment, is not sufficient for application of the hospice benefit under Medicare.

Section 322 of BIPA became effective for certifications made on or after the date of enactment, December 21, 2000.

III. Provisions of This Proposed Rule

We are proposing to make conforming changes to the Medicare hospice regulations to reflect the statutory changes discussed above. In addition, we are proposing to revise the regulation to reflect current policy on the documentation needed to support a certification of terminal illness, admission to Medicare hospice, and discharge from hospice. We are proposing to add one new requirement that would allow for discharges from

hospice for cause under very limited circumstances.

We propose to amend 42 CFR chapter IV by revising part 418.

A. Duration of Hospice care Coverage—Election Periods (§ 418.21)

In § 418.21, we are revising paragraph (a) to make hospice benefit periods available in two 90-day periods followed by an unlimited number of 60-day periods (requirement of section 4443 of the BBA).

B. Certification of Terminal Illness (§ 418.22)

We are revising the cross reference in § 418.22(a)(1) from "§ 418.21" to "§ 418.21(a)" and removing the phrase "for two, three, or four periods" and replacing it with "for an unlimited number of periods" to reflect the changes in the hospice care election periods (requirement of section 4443 of the BBA). We are revising the basic requirement at paragraph (a)(2) to state that the hospice must obtain written certification before it submits a claim for payment (requirement of section 4448 of the BBA), and we are proposing to revise the exception at paragraph (a)(3) to state that, if the hospice cannot obtain the written certification within 2 calendar days, it must obtain an oral certification within 2 calendar days, and the written certification before it submits a claim for payment. Oral certifications, therefore, which are necessary only if the hospice is unable to obtain written certification within 2 calendar days of the start of the benefit period, would be required for each benefit period rather than for just the initial 90-day period. We are maintaining our requirement for verbal physician's certification no later than 2 days after hospice care begins because we continue to believe that proper and timely assessment of a patient's condition is of critical importance both to the hospice, which becomes responsible for the patient, and to the patient, who must have a sound basis for choosing palliative rather than curative care.

As a condition of eligibility for a Medicare hospice program, an individual must be entitled to Medicare Part A and be certified as terminally ill. The Act also requires that this certification be made in writing by either the hospice medical director or the physician member of the interdisciplinary group, and by the attending physician, if the patient has one. However, the law does not explicitly discuss what information a hospice physician needs to consider

before making a certification of terminal illness.

Operation Restore Trust (ORT), a joint effort among the Centers for Medicare & Medicaid Services, the Office of the Inspector General, and the Administration on Aging to identify vulnerabilities in the Medicare program and to pursue ways to reduce Medicare's exposure to fraud and abuse, identified several areas of weakness in the hospice benefit, primarily in the area of hospice eligibility. In 1995, as a result of early ORT findings, we issued a letter to all Regional Offices and Regional Home Health Intermediaries (RHHIs) clarifying what should be included in a patient's medical record to support the certification of terminal illness. Subsequent ORT reports, and medical reviews conducted by RHHIs, have raised concerns about inappropriate certifications and recertifications and problems with a lack of documentation to support a prognosis of terminal illness. These reports and reviews found that certifications are being made for patients who are chronically ill but who are without complications or other circumstances that indicate a life expectancy of 6 months or less.

In response to these concerns, we are proposing to revise § 418.22(b) by adding introductory text, redesignating paragraph (b) as paragraph (b)(1), and adding an additional requirement for the content of certification as paragraph (b)(2). The introductory text will state that certification for the hospice benefit will be based upon the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. In paragraph (b)(2), we propose requiring that specific clinical findings and other documentation supporting the medical prognosis accompany the written certification and be filed in the medical record as required under § 418.22(d).

C. Election of Hospice Care (§ 418.24)

In § 418.24, we are proposing to add to paragraph (c), "Duration of election," a new paragraph (c)(3) to state that an election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual is not discharged from the hospice under the provisions of § 418.26. This addition would clarify that only revocation by the beneficiary or discharge by the hospice terminates an election.

D. Admission to Hospice Care (§ 418.25)

Also in response to concerns raised by ORT, we are proposing to establish general guidance on hospice admission procedures. Currently, there is no guidance in manuals or regulations regarding admission procedures. We are proposing to add a new § 418.25, "Admission to hospice care," which would establish specific requirements to be met before a hospice provider admits a patient to its care.

Paragraph (a) would permit a hospice to admit a patient only on the recommendation of the medical director in consultation with the patient's attending physician, if any. We realize that many hospice patients are referred to hospice from various "nonmedical" sources. This is entirely appropriate; however, it is the responsibility of the medical director, in concert with the attending physician, to assess the patient's medical condition and determine if the patient can be certified as terminally ill.

Paragraph (b) would require that the hospice medical director consider at least the following information when making a decision to certify that a patient is terminally ill: diagnosis of the patient's terminal condition; any related diagnoses or comorbidities; and current clinically relevant findings supporting all diagnoses.

E. Discharge From Hospice Care (§§ 418.26 and 418.28)

As with admission to hospice, the statute does not explicitly address when it is appropriate to discharge an individual from hospice care. Section 210 of the *Medicare Hospice Manual* (HCFA Pub. 21) explains that discharge is allowable only if the patient is no longer terminally ill or if the patient moves out of the service area.

We propose to add a new § 418.26, "Discharge from hospice care," to specify when a hospice may discharge a patient from its care. Paragraph (a), "Reasons for discharge," would specify that a hospice may discharge a patient if—

1. The patient moves out of the hospice's service area or transfers to another hospice;
2. The hospice determines that the patient is no longer terminally ill; or
3. The hospice determines, under a policy set by the hospice for the purpose of addressing "discharge for cause" that also meets the requirements discussed in the remainder of the new paragraph (a), that the patient's behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to

operate effectively is seriously impaired. When the hospice seeks to discharge a patient, we would require it to make a serious effort to resolve the problem(s) presented by the patient's behavior or situation; ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services; document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into the patient's medical records; and obtain a written physician's order from the patient's attending physician and hospice medical director concurring with the discharge from the hospice.

Since the inception of the Medicare hospice program, we have received inquiries from hospices regarding patients and their family members or primary caregivers who elected hospice but subsequently became uncooperative or hostile (including threats of physical harm and to the extent that hospice staff could not provide care to the patient) when the facilities attempted to provide care. In the absence of regulations or guidance from Medicare regarding these situations, hospices were uncertain as to their authority to act to resolve this type of problem. We offered informal guidance that if the hospice had made a conscientious effort to resolve the problem and had documented that effort, and the patient refused to revoke the benefit voluntarily, a discharge would be indicated. Failure to revoke the benefit could place the patient in a compromised position in which the patient would not be able to receive services from the hospice but would at the same time be unable to obtain services under the standard Medicare program because of his or her hospice status. An additional concern is the issue of daily payments being made to a hospice when no services are being provided. We are interested in commenter responses to this proposed regulation, particularly as to whether it is needed, and, if it is, whether there are sufficient protections for patients in the proposed rule.

Paragraph (b), "Effect of discharge," would specify that an individual, upon discharge from the hospice during a particular election period for reasons other than immediate transfer to another hospice is no longer covered under Medicare for hospice care and resumes Medicare coverage of the benefits waived under § 418.24(d). If the beneficiary becomes eligible for the hospice benefit at a future time, he or she would be able to elect to receive this benefit again.

Although the statute does not explicitly address when a hospice may discharge a patient from its care, we

realize that there are certain instances in which it is no longer appropriate for a hospice to provide care to a patient. We have attempted to capture those instances with our proposal; nevertheless, we are requesting that commenters share their experiences regarding situations that have arisen that would fall into one of our proposed categories.

A decision that a hospice patient is no longer terminally ill is generally not made during one assessment. However, once it is determined that the patient is no longer terminally ill, the patient is no longer eligible to receive the Medicare hospice benefit. Currently, the regulations do not provide any time for discharge planning between the determination that the patient is no longer terminally ill and discharge from the benefit. Since the BBA has ended the limitation on available benefit periods during a beneficiary's lifetime, we expect to see an increase in the number of beneficiaries being discharged from, or revoking, the hospice benefit because they can no longer be certified as terminally ill. However, it is common for these beneficiaries to remain in medically fragile conditions and in need of some type of medical services in order to remain at home. It is important that hospice providers consider these needs so that support structures can quickly be put into place should the patient's prognosis improve.

Therefore, we are proposing to add a paragraph (c), "Discharge planning," in new § 418.26. We would require at paragraph (c)(1) that the hospice have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change such that the patient cannot continue to be certified as terminally ill. Additionally, we are proposing at paragraph (c)(2) that the discharge planning process must ensure that planning for the potential of discharge includes consideration of plans for any necessary family counseling, patient education, or other services before the patient is discharged because he or she is no longer terminally ill.

Finally, § 418.28(b)(1) is revised to permit discharges for cause (under proposed § 418.26(a)(3)) if a patient refuses to sign a revocation statement. A signed revocation statement serves to protect hospice patients whose hospice may seek to discharge them because of possible higher costs associated with use of necessary services. Under current regulations, if a patient who otherwise would be discharged for cause were to refuse to sign a revocation statement,

the hospice would be in the anomalous position of receiving daily payments from Medicare for a person who cannot receive services. Earlier in this section, the implications for the hospice and the beneficiary were discussed. Paragraph (b)(1) would permit waiver of a signed revocation if one is not obtainable in cases of discharge for cause. It is our intention to take all comments into account prior to finalizing the "discharge for cause" policy. If implemented, our utmost concern is that there are sufficient patient protections in place to ensure appropriate delivery of care and, if needed discharge planning.

F. Covered Services (§ 418.202)

We would add a new paragraph (i) to § 418.202 to state that any other service that is specified in the patient's plan of care as reasonable and necessary for the palliation and management of the patient's terminal illness and related conditions, and for which payment may otherwise be made under Medicare, is a covered hospice service. This change was made by section 4444 of the BBA and was a clarification of long-standing Medicare policy.

G. Payment for Hospice Care (§§ 418.301, 418.302, 418.304, and 418.306)

In addition to reflecting the payment changes required by the BBA, we are proposing to add a new paragraph (c) to § 418.301, "Basic rules." This paragraph would restate the basic requirement, included in the provider agreement, that the hospice may not charge a patient for services for which the patient is entitled to have payment made under Medicare or for services for which the patient would be entitled to payment if the provider had completed all of the actions described in § 489.21. Since this requirement is currently included in the provider agreement, we would restate it in this part for clarification only.

We are adding a new paragraph (g) to § 418.302, "Payment procedures for hospice care," to provide that payment for routine home care and continuous home care would be made on the basis of the geographic location where the service is provided (requirement of section 4442 of the BBA).

We would also update the rules found at § 418.304, "Payment for physician services," to reflect current payment methodology for physician services under Medicare Part B. References to reimbursement based on reasonable charges would be replaced with references to the physician fee schedule. We would revise the first sentence of paragraph (b) to clarify that a specified

Medicare contractor pays the hospice an amount equivalent to 100 percent of the physician fee schedule, rather than 100 percent of the physician's reasonable charge, for those physician services furnished by hospice employees or those under arrangement with the hospice. We would also revise the second sentence of paragraph (c) to specify that services of the patient's attending physician, if he or she is not an employee of the hospice or providing services under arrangements with the hospice, are paid by the carrier under the procedures in subpart A, part 414 of chapter IV.

Finally, in § 418.306, "Determination of payment rates," we would revise paragraph (b)(3) and add new paragraphs (b)(4) and (b)(5) to set the payment rate in Federal fiscal years 1998 through 2002 as the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase minus 1 percentage point, with the exception that the payments for the first half of FY 2001 shall be increased 0.5 percent, and then increased an additional 5 percent over the above calculation. Payments for all of FY 2002 will be increased 0.75 percent.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), 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 report should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments 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:

Sections 418.22 and 418.26 of this proposed regulation contain information collection requirements that are subject to review by OMB under the PRA.

Section 418.22 Certification of Terminal Illness

The current collection requirements referenced in § 418.22 have been approved by OMB under approval number 0938–0302, with a current expiration date of January 31, 2003. However, this rule proposes a new collection requirement, which requires CMS to solicit comment on the new information collection requirement and resubmit 0938–0302 to OMB for review and approval, as a revision to a currently approved collection.

The newly proposed requirement as referenced under paragraph (b)(2) of this section stipulates that specific clinical findings and other documentation that support the medical prognosis must accompany the certification of terminal illness and must be filed in the medical record with the written certification as set forth in paragraph (d)(2) of this section.

While this requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3 (b)(2) and (b)(3) because the requirement is considered a reasonable and customary business practice and/or is required under State or local laws and/or regulations.

Section 418.26 Discharge From Hospice Care

The requirement referenced in paragraph (a)(3)(iii) of this section requires the documentation of the problem(s) related to the patient and efforts made to resolve the problem(s) and enter this documentation into the patient's medical records.

The requirement referenced in paragraph (a)(3)(iv) of this section requires that a written physician's order from the patient's attending physician and hospice medical director concurring with discharge from hospice care be obtained and included in the patient's medical record.

While these requirements are subject to the PRA, we believe the burden associated with these requirements is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3) because the requirements are considered reasonable and customary business practices and/or are required under State or local laws and/or regulations.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Standards and Security

Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, ATTN: John Burke, CMS–1022–P; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Eydt, CMS Desk Officer CMS–1022–P.

V. Regulatory Impact Analysis

The provisions of this proposed rule are based upon provisions in the BBA, BBRA, and BIPA, with statutorily-set timeframes, and have already been implemented through program memoranda. These include changes in election periods; timing requirements for written certification; covered services; payment based upon site of service; and annual payment update amounts. Other proposed provisions address documentation supporting certification; admission requirements; discharge from hospice; and clarification of current policy that has not previously been captured in regulations.

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 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 in any one year). We have determined that this rule is not a major rule for the reasons discussed below.

The RFA requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and government agencies. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or having revenues of \$25 million or less annually. For purposes of the RFA, all hospices are considered to be small entities. In 2001, there were approximately 2,277 Medicare-certified hospices. Of those 2,277, approximately 73 percent can be considered small

entities because they were identified as being voluntary, government, or other agency.

Given the general lack of hospice data and the unpredictable nature of hospice care, it is extremely difficult to predict the savings or costs associated with the changes contained in this proposed rule. Originally, we estimated the Medicare hospice rate reductions required by section 4441(a) of the BBA would result in a \$103 million savings to the Medicare program in FY 2002. Increases required by section 321 of BIPA, however, will add \$37 million to Medicare program costs. While it is likely that all of the Medicare-certified hospices considered to be small entities have been required to make changes in their operations in some way due to the implementation of these statutory provisions and proposed changes, this NPRM does not propose any additional changes that are likely to significantly impact the operations of hospice providers. For these reasons, we certify that this proposed rule will not have a significant effect on a substantial number of small entities. However, we have prepared the following analysis to describe the impacts of this rule. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by the RFA and EO 12866.

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. This proposed rule largely codifies existing hospice requirements and will not result in a significant impact on a substantial number of small rural hospitals. Therefore, no analysis is required.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This proposed rule does not impose unfunded mandates, as defined by Section 202 of UMRA, as it will not result in the expenditure in any 1 year by either State, local or tribal governments, or by the private sector of \$110 million.

Executive Order 13132 establishes certain requirements that an agency

must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule has no impact on State law. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and we believe that it would not have substantial Federalism implications.

Section 1902(a)(13)(B) of the Act requires the Medicaid payment methodology for hospice care to be determined using the same methodology that is used for Medicare. State Medicaid programs with the optional Medicaid hospice benefit would be required to implement sections 4441(a) and 4442 of the BBA. We remain unaware of any impact of these provisions on State Medicaid programs since these provisions became effective. Nevertheless, it is possible that these payment-related provisions could impact particular State Medicaid programs. However, because each State Medicaid program is unique, it is impossible to quantify meaningfully, an estimate of the effect of the costs on State and local governments.

B. Anticipated Effects

1. Effects on Hospice Providers

Given the general lack of hospice data and the unpredictable nature of hospice care, it is extremely difficult to quantify the impact this proposed rule would have on hospice providers. Nevertheless, we have tried to estimate the impact of the following changes on hospice providers. In general, we believe that the effect of the proposed rule will have minimal economic impact on hospice providers or on the regulatory burden of small business. In the following sections we have indicated implementation actions already taken, and anticipated effects the proposed rules may have.

2. Effects on Payments

The BBA required hospice providers to bill for routine and continuous home care based on the geographic location where the service was provided. We expect that Medicare would experience some savings with this provision; however, it is impossible to predict the size of the savings attributable to this provision. These Medicare savings may reflect a cost to hospice providers. This BBA change has been implemented through program memoranda. This proposed rule merely codifies this statutorily required change.

3. Effects on Benefit Period Change

Medicare hospice is now available in two 90-day periods and an unlimited number of 60-day benefit periods. Because there is no longer a limit on the number of benefit periods available to a beneficiary, it is possible that this change would result in an increase in the number of revocations and reelections. However, we anticipate that this change would have a negligible effect on hospice providers. The change in benefit periods was implemented by a program memorandum issued shortly after passage of the BBA and has already been incorporated into hospice program operations.

4. Effects on Covered Services

The BBA clarified that the Medicare hospice benefit covers any service otherwise covered by Medicare and listed in the hospice plan of care as reasonable and necessary for the palliation and management of a terminal illness. This change should not generate any additional costs for Medicare hospices because it is merely a statutory clarification of existing Medicare policy. This clarification of covered hospice services was implemented through a program memorandum issued prior to the effective date set by the BBA, April 1, 1998 and is merely being codified by this regulation. It helped providers determine better the services they must provide.

5. Effects of Physician Certification

The requirement that a written certification of terminal illness for admission to a hospice for the initial 90-day benefit period be on file before a claim for payment is submitted would not impose any additional costs on hospice providers and removes the problem of obtaining the written certification according to a rigid timeframe. This requirement would provide hospices with more flexibility to establish cost-efficient procedures for obtaining the required certifications. However, the proposed expansion of the requirement for verbal certifications to every benefit period may impose costs on hospice providers. Before enactment of the BBA, verbal certifications were required within 2 days of the start of care during the first benefit period if a written certification could not be obtained within those 2 days. We are proposing to require that, absent written certification, verbal certifications of terminal illness be obtained within those 2 days for each benefit period. Although we believe the impact of this proposal would be negligible, it is difficult to estimate the exact size of the

impact of this proposal because some costs may be negated by the increased flexibility, and time, a hospice provider has in obtaining the required written certifications.

Additionally, we believe that the proposal to require that written certifications of terminal illness be accompanied by specific clinical findings and documentation supporting the prognosis would not impose any new costs on hospice providers. We released a policy memorandum in 1995 to all hospice providers, through the fiscal intermediaries, requesting that all hospices maintain documentation demonstrating a beneficiary's terminal status. Because it has been 6 years since we issued the policy calling for specific clinical findings and other documentation supporting the terminal prognosis, we do not anticipate that the requirement will alter hospices' current practices.

6. Effects on Admission to Hospice Care

We believe that the proposed regulation describing admission responsibilities would impose no additional burden upon hospices. The responsibilities were referred to in various regulations, manuals, program memoranda, and other correspondence; this regulation brings them together in an organized rule. ORT and OIG investigations and reviews found that admission activities were not always executed fully, or when done, they were not always documented. This proposed regulation would specify the consultation between the attending physician and the hospice and its medical director that normally does or should take place when a physician seeks hospice care for his or her patient. The regulation would also describe the consideration that the medical director gives, when deciding upon certification, to the patient's diagnosis, related diagnoses, medical findings that support those diagnoses, the over all medical management needs of the patient, and the attending physician's future plans for the patient. We do not believe any new costs are associated with these proposed requirements, and the 1995 policy memorandum had made clear hospice admission responsibilities and the need to document their execution. We found that the hospice provider community was generally pleased that CMS had issued the guidance, which alleviated previous problems associated with admission of beneficiaries to hospice care.

7. Effects on Discharge and Discharge Planning

This proposed regulation may add a small additional burden to hospices providing services to Medicare beneficiaries, but at the same time it also should reduce certain other burdens they may currently experience, particularly with respect to making appropriate discharges. In the absence of specific regulations, hospices have often been uncertain what to do when a patient appeared appropriate for discharge from the program. There was limited manual guidance, although following the ORT and OIG investigations, some additional information on the appropriate time to discharge patients was communicated to the hospice industry. Our proposal would incorporate discharge planning, a normal part of health care provision, into the hospice's care planning procedures. Regular, ongoing care planning, including the potential for discharge, has always been part of a hospice's responsibilities, and the regulation would simply recognize this responsibility. It is not a new additional burden.

Discharge for certain disruptive, abusive, or uncooperative patients would entail a small additional burden upon very few hospices, based on past discussions with some providers before preparation of this proposed rule. We believe the burden is small, because we have rarely received requests from hospices over the years for relief in cases involving this type of behavior. Elsewhere in this preamble, we have elicited input on this particular proposed rule, particularly with respect to protection of patients. We are aware of the burden that individual providers have had when faced with difficult patients, and this proposal would provide a way for them to resolve it, and, we believe, also lessen burdens currently experienced when trying to provide care to this type of patient.

The section of this proposed regulation that discusses the effect of discharge, that is, that a beneficiary discharged from hospice care immediately resumes full coverage under the regular Medicare program, has always been the law. However, it has not been stated in regulation in a straightforward manner, and doing so offers reassurance to both the beneficiary and the hospice that discharge from the hospice does not mean the loss of Medicare benefits. This section also assures a beneficiary that he or she may again elect hospice at any future time if he or she meets eligibility requirements.

C. Effects on Other Providers

We do not anticipate that this rule would have any effects on other provider types.

D. Effects on the Medicare and Medicaid Programs

As discussed above, it is very difficult to estimate the size of any savings to the Medicare program attributable to this proposed rule. We have estimated that the hospice rate reduction for FY 1998 through FY 2002, as required by section 4441(b) of the BBA, section 131(a) of BBRA, and section 321 of BIPA, would result in a total savings of \$108 million. Also, as discussed above, it is very difficult to estimate the size of any implementation costs to State Medicaid programs with optional Medicaid hospice benefits. However, it should be noted that the BBA provisions that State Medicaid programs are required to implement (rates of payment, payment based on location where care is furnished, other items and services, physician contracting) have been effective since August 5, 1997. Since that time, we have not received any correspondence from State Medicaid programs indicating that these provisions have had significant costs associated with implementation.

E. Alternatives Considered

Most of the proposed regulations are mandated requirements of the BBA, BBRA, and BIPA, and have already been implemented by CMS Program Memoranda, published in the month after passage of the BBA, and the month after the passage of BIPA. BBRA changes only concerned hospice payment amounts but did not affect the basic law. Discharge for cause will enable us to implement policies that permit hospices to act in those rare events that indicate the need, but with protection for the beneficiary included in the rules. Alternatively, hospices may continue to address this particular problem without certainty as to their authority in these special situations. Other proposed regulations represent current policies that have been implemented and recognized by the industry, clarification of current regulations, or suggested policies that the industry and CMS believe may help improve the Medicare hospice program.

F. Conclusion

The general lack of hospice data and the unpredictable nature of hospice care have made it extremely difficult to predict the savings or costs associated with the changes contained in this proposed rule. However, we believe that the proposed changes would create very

little, if any, new economic or regulatory burdens on hospice providers. These proposed changes are either statements of current policy or clarifications of policy that would benefit hospice providers. We believe that we have made every effort to mitigate the effects of these proposed changes on hospice providers.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive in response to **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.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and Record keeping requirements.

For the reasons set forth in the preamble, 42 CFR, Chapter IV, part 418 is proposed to be amended as set forth below:

PART 418—HOSPICE CARE

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Eligibility, Election and Duration of Benefits

2. In § 418.21, paragraph (a) is revised to read as follows:

§ 418.21 Duration of hospice care coverage—Election periods.

(a) Subject to the conditions set forth in this part, an individual may elect to receive hospice care during one or more of the following election periods:

- (1) An initial 90-day period;
- (2) A subsequent 90-day period; or
- (3) An unlimited number of subsequent 60-day periods.

* * * * *

3. In § 418.22, paragraphs (a) and (b) are revised to read as follows:

§ 418.22 Certification of terminal illness.

(a) *Timing of certification*—(1) *General rule.* The hospice must obtain written certification of terminal illness for each of the periods listed in

§ 418.21(a), even if a single election continues in effect for an unlimited number of periods, as provided in § 418.24(c).

(2) *Basic requirement.* Except as provided in paragraph (a)(3) of this section, the hospice must obtain the written certification before it submits a claim for payment.

(3) *Exception.* If the hospice cannot obtain the written certification within 2 calendar days, it must obtain an oral certification within 2 calendar days and the written certification before it submits a claim for payment.

(b) *Content of certification.*

Certification will be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. The certification must conform to the following requirements:

(1) The certification must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course.

(2) Specific clinical findings and other documentation that support the medical prognosis must accompany the certification and must be filed in the medical record with the written certification as set forth in paragraph (d)(2) of this section.

* * * * *

4. In § 418.24, paragraph (c) is revised to read as follows:

§ 418.24 Election of hospice care.

* * * * *

(c) *Duration of election.* An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual—

(1) Remains in the care of a hospice;

(2) Does not revoke the election under the provisions of § 418.28; and

(3) Is not discharged from the hospice under the provisions of § 418.26.

* * * * *

5. New §§ 418.25 and 418.26 are added to read as follows:

§ 418.25 Admission to hospice care.

(a) The hospice admits a patient only on the recommendation of the medical director in consultation with the patient's attending physician, if any.

(b) In reaching a decision to certify that the patient is terminally ill, the hospice medical director must consider at least the following information:

(1) Diagnosis of the terminal condition of the patient.

(2) Other health conditions, whether related or unrelated to the terminal condition.

(3) Current clinically relevant findings supporting all diagnoses.

§ 418.26 Discharge from hospice care.

(a) *Reasons for discharge.* A hospice may discharge a patient if—

(1) The patient moves out of the hospice's service area or transfers to another hospice;

(2) The hospice determines that the patient is no longer terminally ill; or

(3) The hospice determines, under a policy set by the hospice for the purpose of addressing discharge for cause that meets the requirements of paragraphs (a)(3)(i) through (a)(3)(iv) of this section, that the patient's behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired. The hospice must do the following before it seeks to discharge a patient:

(i) Make a serious effort to resolve the problem(s) presented by the patient's behavior or situation.

(ii) Ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services.

(iii) Document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into its medical records.

(iv) Obtain a written physician's order from the patient's attending physician and hospice medical director concurring with discharge from hospice care.

(b) *Effect of discharge.* An individual, upon discharge from the hospice during a particular election period for reasons other than immediate transfer to another hospice—

(1) Is no longer covered under Medicare for hospice care;

(2) Resumes Medicare coverage of the benefits waived under § 418.24(d); and

(3) May at any time elect to receive hospice care if he or she is again eligible to receive the benefit.

(c) *Discharge planning.* (1) The hospice must have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change such that the patient cannot continue to be certified as terminally ill.

(2) The discharge planning process must include planning for any necessary family counseling, patient education, or other services before the patient is discharged because he or she is no longer terminally ill.

6. In § 418.28, paragraph (b)(1) is amended by adding the following sentence at the end of the paragraph.

§ 418.28 Revoking the election of hospice care.

* * * * *

(b) * * *

(1) * * * If a signed revocation is not obtainable by the hospice for a

discharge under § 418.26(a)(3), the requirement of the section may be waived.

Subpart F—Covered Services

7. In § 418.202, the introductory text is republished, and a new paragraph (i) is added to read as follows:

§ 418.202 Covered services.

All services must be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

* * * * *

(i) Effective April 1, 1998, any other service that is specified in the patient's plan of care as reasonable and necessary for the palliation and management of the patient's terminal illness and related conditions and for which payment may otherwise be made under Medicare.

Subpart G—Payment for Hospice Care

8. Section 418.301 is amended by adding a new paragraph (c) to read as follows:

§ 418.301 Basic rules.

* * * * *

(c) The hospice may not charge a patient for services for which the patient is entitled to have payment made under Medicare or for services for which the patient would be entitled to payment, as described in § 489.21 of this chapter.

9. Section 418.302 is amended by adding a new paragraph (g) to read as follows:

§ 418.302 Payment procedures for hospice care.

* * * * *

(g) Payment for routine home care and continuous home care is made on the basis of the geographic location where the service is provided.

§ 418.304 [Amended]

10. In § 418.304, the following amendments are made:

a. In paragraph (b), the phrase "physician's reasonable charge" is removed and add in its place "physician fee schedule."

b. In paragraph (c), the phrase "subparts D or E, part 405 of this chapter" is removed and add in its place "subpart A, part 414 of this chapter."

11. In § 418.306, the introductory text of paragraph (b) is republished, paragraph (b)(3) is revised, and new paragraphs (b)(4) and (b)(5) are added to read as follows:

§ 418.306 Determination of payment rates.

* * * * *

(b) *Payment rates.* The payment rates for routine home care and other services included in hospice care are as follows:

* * * * *

(3) For Federal fiscal years 1994 through 2002, the payment rate is the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase minus—

(i) 2 percentage points in FY 1994;

(ii) 1.5 percentage points in FYs 1995 and 1996;

(iii) 0.5 percentage points in FY 1997; and

(iv) 1 percentage point in FY 1998 through FY 2002.

(4) For Federal fiscal year 2001, the payment rate is the payment rate in effect during the previous fiscal year increased by a factor equal to the market basket percentage increase plus 5 percentage points. However, this payment rate is effective only for the period April 1, 2001 through September 30, 2001. For the period October 1, 2000 through March 31, 2001, the payment rate is based upon the rule under paragraph (b)(3)(iv) of this section. The payment rate in effect during the period April 1, 2001 through September 30, 2001 is considered the payment rate in effect during fiscal year 2001.

(5) The payment rate for hospice services furnished during fiscal years 2001 and 2002 will be increased by an additional 0.5 percent and 0.75 percent, respectively. This additional amount will not be included in updating the payment rate as described in paragraph (b)(3) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: June 3, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 21, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29798 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 482**

[CMS–1224–P]

RIN 0938–AM01

Medicare Program; Nondiscrimination in Posthospital Referral to Home Health Agencies and Other Entities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a process for us to collect, maintain, and make available to the public, information about hospital referrals of Medicare patients to home health agencies (HHAs) and other entities with which the hospitals have a financial interest or which have a financial interest in the hospital. We would publicize this information in an effort to increase awareness regarding the availability of Medicare-certified HHAs and other entities to serve the Medicare population, and to inform beneficiaries of their freedom to choose among available Medicare-participating providers that are capable of furnishing the needed services.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1224–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1224–P, PO 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 (one original and two copies) to one of the following addresses:

Room 445–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 persons 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: Elizabeth Carmody, (410) 786–7533.

SUPPLEMENTARY INFORMATION: Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, 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, phone (410) 786–7197.

Copies: Additional copies of the **Federal Register** containing this proposed rule can be made at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: <http://www.access.gpo.gov/nara/index.html>.

I. Background

Section 4321 of the Balanced Budget Act of 1997 (BBA), Pub. L. 105–33, was enacted by the Congress to improve the administration of the Medicare Program by enabling Medicare beneficiaries to make more informed choices about the providers from which they receive Medicare services. We believe that this provision was intended to address concerns that some hospitals were referring patients only to home health agencies (HHAs) in which they had a financial interest. Section 4321 of the BBA addresses both quality and program integrity concerns inherent in financial relationships among hospitals, HHAs, and other entities.

Section 4321(a) of the BBA requires that Medicare participating hospitals, as part of the discharge planning process, share with each beneficiary a list of

Medicare-certified HHAs that serve the beneficiary's geographic area and which request to be listed. In addition, the statute prohibits hospitals from specifying that beneficiaries receive services from a particular HHA. Further, the statute requires that hospitals identify any HHA or other entity in which they have a disclosable financial interest or which have a financial interest in them, although it does not define what is meant by "financial interest." The intent of section 4321(a) is to protect patient choice. Hospitals essentially have a captive population and, through the discharge planning process, can affect who provides posthospitalization services. CMS has already implemented the requirements of section 4321(a). A CMS directive was issued on October 31, 1997, and enforcement is carried out through the hospital survey and certification process. Moreover, the requirements of section 4321(a) are set forth in the proposed hospital conditions of participation, published on December 19, 1997 (62 FR 66726).

This proposed rule would establish a process for implementing sections 4321(b) and (c) of the BBA. Section 4321(b) of the BBA requires each Medicare participating hospital to maintain and disclose to the Secretary of Health and Human Services (the Secretary) the following information:

(1) The nature of any direct or indirect financial interest that exists among the hospital and those HHAs and other entities to which the hospital refers beneficiaries under a discharge plan.

(2) The number of beneficiaries who were discharged from the hospital and who were identified as requiring home health services.

(3) The percentage of those beneficiaries who received home health services from an HHA in which the hospital has a financial relationship.

Section 4321(c) of the BBA requires the Secretary to make available to the public the information disclosed under section 4321(b).

II. Provisions of the Proposed Regulations

We are proposing a process for collecting and publicizing the information required by sections 4321(b) and (c) of the BBA.

A. Claims-Level Information

Information regarding beneficiary utilization of hospital, HHA, and other services is readily available through the secure network governing the day-to-day claims processing operations of the Medicare Program. These claims data are available at the Medicare fiscal

intermediaries and carriers as well as at the Centers for Medicare & Medicaid Services. We propose to use these data to identify hospital discharges and related, subsequent home health services. Further, these data will identify the hospitals, HHAs, and other entities that furnished the Medicare services.

B. Information About Financial Interests

We propose to allow hospitals to satisfy their financial disclosure obligations under the BBA through the Medicare provider enrollment process. The Medicare provider enrollment process already collects information that identifies financial relationships between hospitals, HHAs, and other entities. For example, when applying for a provider number for billing the Medicare program, a hospital must disclose the existence and nature of financial interests in HHAs and other entities. Accordingly, for the purpose of implementing section 4321(b) of the BBA, we propose to define a reportable "financial interest" as any financial interest that a hospital is required to report according to the provider enrollment process, which is governed by section 1124 of the Social Security Act (42 U.S.C. 1320a-3) and its implementing regulations and manual provisions. We do not believe, however, that section 4321 of the BBA should be interpreted to mean that the mere existence of a financial relationship between a hospital and an HHA constitutes a program abuse.

To implement sections 4321(b) and (c) of the BBA without placing any additional reporting burden on Medicare providers, we propose to systemically match and report information from the provider enrollment process on financial interests among hospitals, HHAs, and other entities with information from day-to-day Medicare claims processing on the utilization of home health services. We are soliciting comments on our proposed process, as well as alternative methods for collecting and reporting data.

C. Form and Manner for Disclosing Information

Information collected under sections II.A and B of this preamble will be made available annually in January for the prior October through September period, on a hospital-by-hospital basis. For each hospital, we propose collecting and reporting: (1) The total number of hospital discharges that led to home health services; (2) the percentage of those discharged beneficiaries who received home health services from an

HHA that had a direct or indirect financial relationship with the discharging hospital; (3) the name(s) of the HHA(s) and other entities for which a financial relationship with the hospital exists and for which posthospital services were furnished; and (4) the nature of the financial interest.

We will determine the most effective and efficient ways to make the required information available to the public. Consideration will be given to using websites as well as hardcopy distribution. The form and manner for making the information available will be guided by the need to reach as many beneficiaries as possible in order to assist them in making informed choices about who furnishes their health care services. As such, we invite comments as to the preferred medium for disseminating this information. We anticipate releasing the initial report during the first January that is at least 90 days after the publication of the final rule.

III. Collection of Information Requirements

This document does not impose additional information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995. Information about hospital discharges and related home health services is available through Medicare claims processing systems and databases. Further, financial interest information is already available through the Medicare provider enrollment process.

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 comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded

Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This is not a major rule. It would not impose any additional costs on affected entities, as compliance with the statute and the rules proposed herein are possible through the management and disclosure of information already available to the Medicare Program. Some indeterminable benefits may result by enabling Medicare beneficiaries to make more informed choices about who furnishes their Medicare services. Therefore, no RIA is required.

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. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$7.5 million or less annually. For purposes of the RFA, all hospitals, HHAs, and "other entities" are considered to be small entities. However, the nature of this proposed rule is such that no regulatory burden would be placed upon hospitals, HHAs, and other entities. Therefore, no regulatory relief options are considered.

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 certify that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. Information needed to comply with the statute is already available through the Medicare claims processing and provider enrollment systems. Therefore, no regulatory impact analysis is required.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This proposed rule would not have an impact on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would not have a substantial effect on State or local governments for the reasons noted above.

B. Anticipated Effects

1. Effects on Beneficiaries, Hospitals, HHAs, and Other Entities

The anticipated effects on Medicare's beneficiaries would be an enhanced ability to make informed choices about the care they receive from HHAs and other entities upon discharge from a hospital. There are approximately 6,000 Medicare-certified hospitals and 6,900 Medicare-certified HHAs, of which approximately 2,000 are hospital-based. At this time, we have not compiled additional data that may identify other financial relationships between hospitals, HHAs, and other entities, as further defined under the provider enrollment guidelines.

The effect of this proposed rule on hospitals, HHAs, and other entities is uncertain, but the requirements set forth in this proposed rule would place no additional burden on these providers. A possible outcome might be to influence hospital referral patterns, thus having an impact on HHAs and other entities. The information made available in compliance with the statute and this proposed rule may impact beneficiary choices about who furnishes Medicare services to them and, in turn, may have an indeterminable impact on HHAs and other entities that receive/do not receive the beneficiary's "business" as a result.

2. Effects on the Medicare and Medicaid Programs

This proposed rule would improve our information campaign to assist beneficiaries in their choices for health care delivery. In addition, the information made available through this proposed rule would serve to ensure that the financial interests between

hospitals, HHAs, and other entities do not lead to program integrity abuses such as steering certain patients (for example, healthier patients) to certain HHAs (for example, hospital-owned). We do not believe, however, that section 4321 of the BBA should be interpreted to mean that the mere existence of a financial relationship between a hospital and an HHA constitutes a program abuse.

The effects on the Medicaid Program may be similar in that the information about financial relationships between hospitals, HHAs, and other entities would be made available to the public.

C. Alternatives Considered

We considered requiring hospitals to collect and provide the information necessary for implementation of this proposed rule. We decided to collect the information from existing sources, however, in order to create a process that would not be burdensome to the entities involved. We request comments on our proposed process as well as on alternative approaches of collecting this information. We also invite public comment on what impact provision of this information might have on home health referrals or beneficiaries' choices of providers.

D. Conclusion

As described above, this proposed rule proposes a process for implementing the statutory requirements under sections 4321(b) and (c) of the BBA. This approach would enhance the information made available to Medicare beneficiaries and reduce potential program abuses by hospitals. Further, the proposed approach for complying with the relevant statutory provisions would place no additional burden on all affected entities or on any entity, which may be indirectly affected.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, 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, part 482 as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395hh).

2. Section 482.43 is amended by adding paragraphs (c)(6)(i) through (c)(6)(iii) to read as follows:

§ 482.43 Condition of participation: Discharge planning.

* * * * *

(c) * * *

(6) If a hospital refers a Medicare beneficiary to an HHA or another entity in which the hospital has a reportable financial interest, or the HHA or other entity has a reportable financial interest in the hospital, CMS will make available to the public the following information:

(i) The name of the hospital, HHA, or other entity and the nature of the financial interest to the hospital.

(ii) The number of beneficiaries who the hospital discharged and identified as requiring home health services.

(iii) The percentage of the referrals in paragraph (c)(6)(ii) of this section in which the hospital had financial interest in the HHA, or the HHA had a financial interest in the hospital.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 3, 2002.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 5, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29563 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Financial Eligibility

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Legal Services Corporation (“LSC” or “Corporation”) proposes to amend its regulations relating to financial eligibility for LSC-funded legal services. The proposed revisions are intended to reorganize the regulation to make it easier to read and follow; simplify and streamline the requirements of the rule to ease administrative burdens faced by LSC grantees in implementing the regulation and to aid LSC in enforcement of the regulation; and to clarify the focus of the regulation on the financial eligibility of

applicants for LSC-funded legal services.

DATES: Comments must be submitted on or before December 23, 2002.

ADDRESSES: Comments must be submitted in writing and may be sent by regular mail, or may be transmitted by fax or email to: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002–4250; (202) 336–8952 (fax); mcondray@lsc.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20002–4250; (202) 336–7 (phone); (202) 336–8952 (fax); mcondray@lsc.gov (e-mail).

SUPPLEMENTARY INFORMATION: Section 1007(a) of the Legal Services Corporation Act requires LSC to establish guidelines, including setting maximum income levels, for the determination of applicants’ financial eligibility for LSC-funded legal assistance. Part 1611 implements this provision, setting forth the requirements relating to determination and documentation of client financial eligibility.

The current version of 1611 was adopted in 1983. In 1995, LSC published a proposed revision to part 1611 which represented a major overhaul of the regulation (60 FR 3798, January 15, 1995). The product of significant discussions and negotiation among LSC staff and representatives of the field, the proposed rule reflected an attempt to clarify and simplify the rule without changing most of the underlying policies and concepts of the rule. Following publication of the NPRM, however, no further action on the proposed revisions to part 1611 was taken. Many outstanding issues prompting the 1995 rulemaking remain extant and there are additional issues which have arisen since then. In addition, there are statutory changes which need to be incorporated into the regulation. In light of the above, the LSC Board of Directors identified 45 CFR part 1611, Eligibility, as an appropriate subject for rulemaking on January 27, 2001. On June 30, 2001, the LSC President and the Chair of the Operations and Regulations Committee of the Board of Directors made a determination to proceed with a Negotiated Rulemaking to consider amendments to part 1611. In accordance with the LSC Rulemaking Protocol, LSC

published a notice in the **Federal Register** formally soliciting suggestions for appointment to the Negotiated Rulemaking Working Group from the regulated community, its clients, advocates, the organized bar and other interested parties (66 FR 46976, September 10, 2001).

After receiving submissions of interest, a Working Group was appointed. The members of the Working Group are: Legal Services Corporation, Washington, DC (represented by Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs; John Eidleman, Acting Vice President for Compliance and Administration; Anh Tu, Program Counsel, Office of Program Performance; and Danilo Cardona, Director, Office of Compliance and Enforcement); Legal Services Corporation, Office of Inspector General, Washington, DC (represented by Laurie Tarantowicz, Assistant Inspector General and Legal Counsel); Center for Law and Social Policy, Washington, DC (represented by Linda Perle, Senior Attorney—Legal Services); National Legal Aid and Defenders Association, Washington, DC (represented by Jon Asher, Member NLADA Regulations Committee and Executive Director of Colorado Legal Services); Legal Aid of North Carolina, Raleigh, NC (represented by George Hausen, Executive Director); Northwest Justice Project, Seattle, WA (represented by Deborah Perluss, Director of Advocacy/General Counsel); Blue Ridge Legal Services, Inc., Harrisonburg, VA (represented by John Whitfield, Executive Director); West Texas Legal Services, Fort Worth, TX (represented by Vernon Lewis, Deputy Director); Land of Lincoln Legal Assistance Foundation, Inc., Alton, IL (represented by Joseph Bartylak, Executive Director); Atlanta Legal Aid Society, Atlanta, GA (represented by Steven Gottlieb, Executive Director); and the American Bar Association’s Standing Committee on Legal Aid and Indigents and Defendants (represented by Phyllis Holmen, Member SCLAID and Executive Director, Georgia Legal Services Program).

The Working Group held three meetings: January 7–8, 2002; February 11–12, 2002; and April 11–12, 2002. All three meetings were noticed in the **Federal Register** and were open to public observation. The Working Group conducted its work under the guidance of a professional facilitator. The facilitator, although selected by and under contract to LSC pursuant to LSC’s Rulemaking Protocol, did not represent LSC on the Working Group and served

as a neutral with the continuing support of the Working Group.

The Working Group developed a Draft NPRM which was considered by the Operations and Regulations Committee of the Board of Directors at its meeting on November 8, 2002. The Committee suggested two major revisions to the Draft NPRM (discussed below) and this NPRM (as revised) was approved for publication by the Board of Directors at its meeting on November 9, 2002. Except as noted, all of the specific proposed revisions contained herein represent the consensus opinion of the Working Group.

While specific revisions are discussed in greater detail in the Section-by-Section analysis, below, it should be noted that the proposed revisions reflect several overall goals of the Working Group: reorganization of the regulation to make it easier to read and follow; simplification and streamlining of the requirements of the rule to ease administrative burdens faced by LSC grantees in implementing the regulation and to aid LSC in enforcement of the regulation; and clarification of the focus of the regulation on the financial eligibility of applicants for LSC-funded legal services. In particular, LSC is proposing to significantly reorganize and simplify the sections of the rule which set forth the various requirements relating to establishment of recipient annual income and asset ceilings, authorized exceptions and determinations of eligibility. These changes are intended to improve the clarity of the regulation and include substantive changes to make intake simpler and less burdensome and basic financial eligibility determinations easier for recipients to make. LSC is also proposing to move the existing provisions on group representation, with some amendment, to a separate section of the regulation.

LSC also proposes to eliminate the retainer agreement requirement currently found at § 1611.8 of the regulation. The retainer agreement requirement was the subject of significant discussion in the Working Group. Representatives of the field agreed with the LSC representatives that a retainer agreement may be appropriate under certain circumstances, but argued that this regulatory requirement is not required by statute, is not justified under applicable rules of professional responsibility, may be unnecessarily burdensome in some instances and is not related to financial eligibility determinations. They contended that, barring a statutory mandate, decisions about the use of retainer agreements, like those involving many other matters

relating to the best manner of providing high quality legal assistance, should be determined by a recipient's Board, management and staff, with guidance from the Corporation. They urged LSC to delete this requirement. The LSC representatives, however, were of the opinion that the existing provision in the regulations requiring the execution of retainer agreements is professionally desirable, authorized in accordance with LSC's mandate under section 1007(a)(1) of the Act to assure the maintenance of the highest quality of service and professional standards, and appropriate to assure that there are no misunderstandings as to what services are to be rendered to a particular client. Retainer agreements protect the attorney and recipient in cases of an unfounded malpractice claim and protect the client if the attorney and the recipient should fail to provide legal assistance measuring up to professional standards. In the end, the Working Group was unable to reach consensus on this issue and the Draft NPRM retained a provision generally requiring the execution of retainer agreements, along with proposing requirements for client service notices and PAI referral notices in lieu of retainer agreements under certain circumstances.

In its deliberations on the Draft NPRM, the Operations and Regulations Committee determined that while it agreed that retainer agreements are professionally desirable, it did not find it necessary, either by statute or policy, for LSC to continue to impose such a requirement on recipients. The Committee recommended that the entire proposed § 1611.7 in the Draft NPRM, entitled *Retainer Agreements, Client Service Notices and Referral Notices*, be stricken from the draft prior to publication. In approving the recommendation of the Committee, the Board directed that this action be taken and any conforming amendments necessary be made prior to publication of the NPRM for comment. This NPRM reflects this direction. LSC specifically invites comment on this issue.

One other general issue merits discussion. Section 509(h) of the FY 1996 LSC appropriations act, Pub. L. 104-134, provides that, among other records, eligibility records "shall be made available to any auditor or monitor of the recipient * * * except for such records subject to the attorney-client privilege." This provision has been retained in each subsequent appropriations measure and continues to be in force. The Office of the Inspector General has been interested in having this language expressly incorporated into part 1611.

The Working Group took up the issue and discussed the fact that there is some measure of disagreement about the scope and extent of the access authority granted to the OIG by the statute. Mindful of this disagreement, the Working Group determined that an appropriate approach would be simply to propose language that tracked very closely that of the statute and the Working Group was close to reaching consensus on what would have been proposed § 1611.10, Access to Records. The Working Group acknowledged that such an approach would not settle all of the questions about the meaning of the access provisions, but agreed that it was the best way to incorporate the statutory requirements without causing undue delay in completing its work on this proposed rule. Simultaneously, however, in the course of a similar discussion taking place in a separate negotiated rulemaking on LSC's alien eligibility regulations, 45 CFR part 1626, it became apparent that the 1626 Working Group would not be able to agree to such an approach, with several participants favoring either leaving an access provision out of the regulation or drafting a provision that reflects a more thorough discussion and interpretation of 509(h).

This situation created a problem for LSC because LSC is not willing either to adopt two differing regulations implementing the same statutory provision, or to have an access to records provision relating to 1611 eligibility records but not an access to records provision relating to 1626 eligibility records when both regulations are in the process of revision. Either of these situations would invite unnecessary implementation problems for LSC, the OIG and recipients. Moreover, upon reflection LSC has determined that, as 509(h) covers significantly more than eligibility records, conducting a full discussion of the meaning of 509(h) in the context of either 1611 or 1626, which deal only with eligibility issues, is not appropriate. The OIG's authority under the statute is not affected by a decision not to incorporate express access to records provisions in either 1611 or 1626. Consequently, LSC does not propose to include regulatory language implementing 509(h) with respect to records covered by this part. Similarly, LSC does not propose to add language regarding 509(h) access to the retainer agreement, client service notice and referral notice provisions of proposed § 1611.7.

Although the field representatives to the Working Group concur in this decision, the OIG dissents. As noted

above, the OIG has been interested in incorporating the 509(h) authority in the regulations for some time. The OIG disagrees with LSC's position that conducting a full discussion of the meaning of 509(h) in the context of either 1611 or 1626 is inappropriate. Rather, the OIG is of the opinion that since one of the goals of this rulemaking (and the 1626 rulemaking) is to clarify the requirements applicable to recipients relating to eligibility records and since access to eligibility records is provided by 509(h), the 1611 and 1626 negotiated rulemakings provide an opportunity to clarify the statutory authority. Failing a full discussion of 509(h) in the current regulatory context, the OIG believes that including an access provision which closely tracks the statutory language would make clear that the documentation and records recipients are required to maintain under parts 1611 and 1626 are eligibility records to which LSC has access under 509(h).

Moreover, the OIG is of the opinion that even if a consensus could not be reached during the negotiated rulemaking process, LSC nonetheless should include an access provision in the rule. Negotiated rulemaking has at its ultimate goal the resolution of differences of all issues by consensus. Yet, the negotiated rulemaking process anticipates that consenses may not be achieved on all issues, and in such cases, LSC, as the entity responsible for implementing the law, promulgates the rule it deems appropriate. The OIG believes this is especially warranted in the case of access, where the anticipated lack of ability to reach consensus highlights the very problem the rulemaking should address and resolve. The OIG notes that the discussions among the Working Group members make clear that there are differences in interpretation regarding the access to which LSC is authorized. The OIG further notes that those differences have resulted in problems and delays when access to grantee information is sought, causing the unnecessary expenditure of time and resources for all involved. The OIG believes that attempting to avoid the problem by not including an access provision in the rule resolves nothing.

LSC acknowledges that not including an access provision in § 1611 does not resolve the issues relating to the meaning and scope of the 509(h) access provision. Indeed, as noted above, LSC has determined that, as section 509(h) covers a range of records beyond financial eligibility records, it is not appropriate for LSC to use this rulemaking to explore and resolve these contentious and important issues.

Title of Part 1611

LSC proposes to change the title of part 1611 from "Eligibility" to "Financial Eligibility." This proposed change is intended, first, to make clear that with respect to individuals seeking LSC-funded legal assistance, the standards of this part deal only with the financial eligibility of such persons. LSC believes this change will help clarify that a finding of financial eligibility under part 1611 does not create an entitlement to service. Rather, financial eligibility is merely a threshold question and the issue of whether any otherwise eligible applicant will be provided with legal assistance is a matter for the program to determine with reference to its priorities and resources. In addition, this part does not address eligibility based on citizenship or alienage status; those eligibility requirements are set forth in part 1626 of LSC's regulations, Restrictions on Legal Assistance to Aliens.

Section-by-Section Analysis

Section 1611.1 Purpose

LSC is proposing to revise this section to make clear that the standards of this part concern only the financial eligibility of persons seeking LSC-funded legal assistance and that a finding of financial eligibility under part 1611 does not create an entitlement to service. In addition, LSC proposes to remove the language in the current regulation referring to giving preferences to "those least able to obtain legal assistance." Although the original LSC Act contained language indicating that programs should provide preferences in service to the poorest among applicants, that language was deleted when the Act was reauthorized in 1977 and has remained out of the legislation ever since. Thus, as there is no statutory basis for a preference for those least able to afford assistance and because LSC believes that the regulation should focus on financial eligibility determinations without reference to issues relating to service determinations, this language should be removed from the regulation. Finally, LSC proposes to add language specifying that this part also sets forth financial standards for groups seeking legal assistance supported by LSC funds.

Section 1611.2; Definitions

LSC proposes to add definitions for several terms and to amend the definitions for each of the existing terms currently defined in the regulation. LSC believes that the new definitions and the amended definitions will help to

make the regulation more easily comprehensible.

Section 1611.2(a) Applicable Rules of Professional Responsibility

LSC proposes to add a definition of the term "applicable rules of professional responsibility" as that term appears in proposed § 1611.7, Change in Financial Eligibility Status. This definition is intended to make clear that the references in the regulation refer to the rules of ethics and professional responsibility applicable to attorneys in the jurisdiction where the recipient either provides legal services or maintains its records.

Section 1611.2(b) Applicant

Consistent with the intention throughout to keep the focus of the regulation on the standards and criteria for determining the financial eligibility of persons seeking legal assistance supported with LSC funds, LSC proposes to use the term "applicant" throughout the regulation to emphasize the distinction between applicants, clients, and persons seeking or receiving assistance supported by other than LSC funds. Accordingly, LSC proposes to add a definition of applicant providing that an applicant is an individual seeking legal assistance supported with LSC funds. Groups, corporations and associations would be specifically excluded from this definition, as the eligibility of groups would be addressed wholly within proposed § 1611.8.

Programs currently may provide legal assistance without regard to a person's financial eligibility under part 1611 when the assistance is supported wholly by non-LSC funds. LSC does not propose to change this (in fact, LSC proposes to restate this principle in proposed § 1611.4(a)) and believes that the use of the term applicant as proposed herein will help to clarify the application of the rule.

Section 1611.2(c) Assets

LSC proposes to add a definition of the term assets to the regulation. The proposed definition, "cash or other resources that are readily convertible to cash, which are currently and actually available to the applicant," is intended to provide some guidance to programs as to what is meant by the term assets, yet provide considerable latitude to programs in developing a description of assets that addresses local concerns and conditions. The key concepts intended in this definition are (1) ready convertibility to cash; and (2) availability of the resource to the applicant.

Although the term is not defined in the regulation, current § 1611.6(c) states that “assets considered shall include all liquid and non-liquid assets. * * *”

The intent of this requirement is that programs are supposed to consider all assets upon which the applicant could draw in obtaining private legal assistance. While there was no intent to change the underlying requirement, in discussing the issues of assets and asset ceilings in the Working Group it became apparent that the terms “liquid” and “non-liquid” were obscuring the understanding of the regulation. To some, the term “non-liquid” implied something not readily convertible to cash, while to others the term implied an asset that was simply something other than cash, without regard to the ease of convertibility of the asset. Thus, the Working Group decided that the terms “liquid” and “non-liquid” should be eliminated and that the regulation should focus instead on the ready convertibility of the asset to cash.

The other key concept in the definition of asset is the availability of the resource to the applicant. Although the current regulation notes that the recipient’s asset guidelines “shall take into account impediments to an individual’s access to assets of the family unit or household,” the Working Group was of the opinion that this principle could be more clearly articulated. LSC believes that the proposed language accomplishes that purpose.

Section 1611.2(d) Governmental Program for Low Income Individuals or Families

LSC proposes to change the term that is used in the regulation from “governmental program for the poor” to “governmental program for low income individuals and families.” This change is not intended to create any substantive change in the current definition, but merely reflect preferred nomenclature.

Section 1611.2(e) Governmental Program for Persons With Disabilities

LSC is proposing to add a definition of the term “governmental program for persons with disabilities.” LSC proposes to include in the authorized exceptions to the annual income ceilings an exception relating to applicants seeking to obtain or maintain governmental benefits for persons with disabilities. Accordingly, it is appropriate to include a proposed definition for this term. The proposed definition, “any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability,” is intended

to be similar in structure and application to the definition of the term “governmental program for low income individuals and families.”

Section 1611.2(f) Income

LSC proposes to revise the current definition of income to refer to the total cash receipts of a “household,” instead of a “family unit” and to make clear that programs have the discretion to define the term household in any reasonable manner. Currently, the definition of income refers to “family unit,” while the phrase “household or family unit” appears in the section on asset ceilings. It appears that there is no difference intended by the use of different terms in these sections and LSC believes that it is appropriate to simplify the regulation to use the same single term in each place, without creating a substantive change in the meaning of either term. LSC proposes to use “household” instead of “family unit” because it is a simpler, more accessible term.

As noted above, LSC does not intend the use of the term “household” to have a different meaning from the current term “family unit.” Under current guidance from the LSC Office of Legal Affairs, recipients have considerable latitude in defining the term “family unit”. Specifically, OLA External Opinion No. EX-2000-011 states:

Neither the LSC Act nor the LSC regulations define “family unit” for client eligibility purposes. The Corporation will defer to recipient determinations on this issue, within reason. Recipients may consider living arrangements, familial relationships, legal responsibility, financial responsibility or family unit definitions used by government benefits agencies, amongst other factors, in making such decisions.

LSC intends that this standard would also apply to definitions of “household” and the proposed definition would make this clear.

Field representatives on the Working Group also suggested deleting the words “before taxes” from the definition of income. Such a change is desirable, they contend, because automatically deducted taxes are not available for an applicant’s use and the failure to take current taxes into account in determining income has an adverse impact on the working poor. While it is undoubtedly true that automatically deducted taxes are not available to an applicant, LSC does not believe that the definition of income is the appropriate place in the regulation to deal with this problem. Taking the phrase “before taxes” out of the definition of income would effectively change the meaning of income from gross income to net income. The term income has meant

gross income since the original adoption of the eligibility regulation in 1976. See 41 FR 51604, at 51606, November 23, 1976. The maximum income guidelines are based on gross income, as are the underlying DHHS Federal Poverty Guidelines amounts. Changing the definition of income effectively from gross to net would introduce two different uses of the term income into the regulations. LSC believes that this action would cause greater confusion. Moreover, LSC believes that the practical problem (that taxes, indeed, represent funds unavailable to the applicant), is better addressed by considering taxes a fixed debt or obligation which can be considered by the recipient in making financial eligibility determinations. LSC invites comment on this issue. This matter is presented in greater detail in the discussion of proposed § 1611.5, below.

In addition, LSC proposes to move the information on what is encompassed by the term “total cash receipts” into the definition of income. LSC believes that having this information in the definition of income, rather than in a separate definition will make the regulation easier to use, particularly as the term “total cash receipts” is used only in the definition of income. In incorporating the language on “total cash receipts,” LSC proposes to take the current definition of the term without any substantive amendment, but reorganized to make it easier to understand. Specifically, LSC proposes to separate the definition into two sentences, one of which sets forth the list of things which are included in total cash receipts and one which sets forth those things which are specifically excluded from the definition of total cash receipts. It is worth noting that the sentence on items included is not intended to be exhaustive, while the sentence on items to be excluded is intended to be exhaustive.

Finally, LSC wishes to take this opportunity to restate in this preamble some guidance on the treatment of Indian trust fund monies in making income determinations. Several provisions of Federal law regulate whether or not income or interests in Indian trusts are taxable or should be considered as resources or income for federal benefits. Under the terms of those laws, LSC has determined that recipients may disregard up to \$2000 per year of funds received by individual Native Americans that are derived from income or interests in Indian trusts from being considered income for the purpose of determining financial eligibility of Native American applicants for service, and that such

funds or interests of individual Native Americans in trust or restricted lands should not be considered as a resource for the purpose of LSC eligibility. See LSC Office of Legal Affairs External Opinion 99-17, August 27, 1999.

As noted in External Opinion 99-17, the exclusion applies only to funds and other interests held *in trust* by the federal government and investment income accrued therefrom. The following have been found to qualify for the exclusion from income in determining eligibility for various government benefits: income from the sale of timber from land held in trust; income derived from farming and ranching operations on reservation land held in trust by the federal government; income derived from rentals, royalties, and sales proceeds from natural resources of land held in trust; sales proceeds from crops grown on land held in trust; and use of land held in trust for grazing purposes. On the other hand, per capita distributions of revenues from gaming activity on tribal trust property are not protected because such funds are not held in trust by the federal government. Thus, such distributions are considered to be income for purposes determining LSC financial eligibility.

Total Cash Receipts

LSC proposes to delete the definition of "total cash receipts," currently at § 1611.2(h), as a separately defined term in the regulation. Rather, LSC proposes to reorganize the information contained in the definition and move it directly into the definition of "income." As noted above, the only place the term "total cash receipts" is used is in the definition of "income" and LSC believes that having a separate definition for "total cash receipts" is cumbersome and unnecessary.

Section 1611.3 Financial Eligibility Policies

LSC proposes to create a new § 1611.3, Financial Eligibility Policies, based on requirements currently found in §§ 1611.5(a), 1611.3(a)-(c) and 1611.6. The new § 1611.3 would address in one section recipients' responsibilities for adopting and implementing financial eligibility policies. Under the proposed new section, the current requirement that recipients' governing bodies have to adopt policies for determining financial eligibility would be retained. LSC proposes, however, to change the current requirement for annual review of these policies and instead require recipients' governing bodies to conduct triennial reviews of policies. The

Working Group agreed that an annual review was unnecessary and has tended to result in rather pro forma reviews of policies. In contrast, a triennial review requirement would be sufficient to ensure that financial eligibility policies remain relevant and would encourage a more thorough and thoughtful review when such review is undertaken. The section would also add an express requirement that recipients would be required to adopt implementing procedures. While this is already implicit in the current regulation, LSC believes it would be better for this requirement to be expressly stated. Such implementing procedures could be adopted either by a recipient's governing body or by the recipient's management.

Proposed § 1611.3 would also contain certain minimum requirements for the content of recipient's financial eligibility policies. Specifically, LSC proposes that the recipient's financial eligibility policy must:

- Specify that only applicants for service determined to be financially eligible under the policy may be further considered for LSC-funded service;
 - Establish annual income ceilings of no more than 125% of the current Department of Health and Human Services Federal Poverty Guidelines amounts;
 - Establish asset ceilings; and
 - Specify that, notwithstanding any other provisions of the regulation or the recipient's financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the individual applicant and shall not consider any jointly held assets.
- In establishing income and asset ceilings, the recipient would have to consider the cost of living in the locality; the number of clients who can be served by the resources of recipient; the potentially eligible population at various ceilings; and the availability of other sources of legal assistance. With respect to jointly held assets of domestic violence victims, this requirement applies when the applicant has made the recipient aware that he or she is a victim of domestic violence.

In addition, LSC proposes to permit recipients to adopt financial eligibility policies which provide for authorized exceptions to the annual income ceiling pursuant to proposed § 1611.5 and for waiver of the asset ceiling under unusual circumstances and when approved by the Executive Director or his/her designee. Finally, LSC proposes to permit recipients to adopt financial

eligibility policies which permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with proposed § 1611.4(b).

These proposed provisions are, with two exceptions, based directly on current requirements with a few substantive changes. First among the changes, recipients would no longer be required to routinely submit their asset ceilings to LSC. This requirement appears to serve little or no purpose, as compliance with this requirement has been spotty and LSC has taken no action to obtain the information from programs which have not automatically submitted it. Moreover, the information collected is not being put to any routine use. In addition, LSC has not had a parallel requirement for the submission of income ceilings. The Working Group determined that this requirement could be eliminated without any adverse effect on program compliance with or Corporation enforcement of the regulation.

Another substantive change is that recipients would be permitted to provide in their financial eligibility policies for the exclusion of (in addition to a primary residence, as provided for in the existing regulation) vehicles, assets used in producing income and other assets excluded from attachment under State or Federal law from the calculation of assets. In identifying other assets excluded from attachment under State or Federal law, LSC has in mind assets that are excluded from bankruptcy proceedings or other assets that may not be attached for the satisfaction of a debt, *etc.*

There was discussion within the Working Group about the appropriate scope of this provision. Field representatives suggested that the list of exclusions should be illustrative, and not exhaustive, allowing programs greater discretion in developing asset ceilings. LSC representatives, however, preferred to retain the approach in the current regulation in which the list of excludable assets is set forth *in toto*, to emphasize the policy that most assets are to be considered and to maintain a basic level of consistency nationally with respect to this issue. However, the LSC representatives agreed that the regulation could afford recipients some additional flexibility in developing asset ceilings, consistent with the policy articulated above. The Working Group believes that the proposed language meets those objectives, particularly in light of the proposed amendment to the asset ceiling waiver standard discussed below. LSC invites comment on whether

the list should be illustrative or exhaustive. LSC also invites comment on whether additional specific assets should be included in the list of excludable assets and, if so, what items might be appropriate.

LSC is also proposing to change the asset ceiling waiver standard slightly. The current regulation permits waiver in "unusual or extremely meritorious situations;" the proposed rule would permit waiver in "unusual circumstances." The Working Group determined that the current language is unnecessarily stringent and that it is unclear what the difference is intended to be between "unusual" and "extremely meritorious." It was suggested in the Working Group that the standard should be "where appropriate." LSC, however, felt that the regulation should continue to reflect the policy that waivers of the asset ceilings should only be granted sparingly and not as a matter of course. The Working Group agreed that the revised language accomplishes this goal, while providing some additional appropriate discretion to programs. In addition, where the current rule requires all waiver decisions to be made by the Executive Director, LSC proposes to permit those decisions to be made by the executive director or his/her designee. LSC believes it is important that a person in significant authority be involved in making asset ceiling waiver decisions, but recognizes that, especially as more programs consolidate and serve larger areas, it is important for programs to have the discretion to delegate certain authority to regional or branch office directors to increase administrative efficiency.

The first totally new element is the proposed language regarding victims of domestic violence. This proposal stems from LSC's FY 1998 appropriations law. Specifically, section 506 of that act provides:

In establishing the income or assets of an individual who is a victim of domestic violence, under section 1007(a)(2) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)), to determine if the individual is eligible for legal assistance, a recipient described in such section shall consider only the assets and income of the individual and shall not include any jointly held assets.

Although this law has been in effect since 1997, it has never been formally incorporated into part 1611. LSC notes that this provision of law applies regardless of whether it appears in the regulation. However, incorporating this language into the regulation is appropriate, particularly in light of the goal of this rulemaking to clarify the

requirements relating to financial eligibility determinations.

Finally, the proposal to permit recipients to adopt financial eligibility policies which permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with proposed § 1611.4(b) is also new. This proposal is discussed in greater detail below.

Section 1611.4 Financial Eligibility for Legal Assistance

This proposed section would set forth the basic requirement that recipients may provide legal assistance supported with LSC funds only to those individuals whom the recipient has determined are financially eligible for such assistance pursuant to their program's policies, consistent with this part. This section also proposes to contain a statement that nothing in part 1611 prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is supported wholly by funds from a source other than LSC (regardless of whether LSC funds were used as a match to obtain such other funds, as is the case with Title III or VOCA grant funds) and the assistance is otherwise permissible under applicable law and regulation. This proposed section would further provide that a recipient may find an applicant to be financially eligible if the applicant's assets are at or below the recipient's applicable asset ceiling level (or the ceiling has been properly waived) and the applicant's income is at or below the recipient's applicable income ceiling, or if one or more of the authorized exceptions to the ceiling applies. These provisions are based on existing provisions found in §§ 1611.3, 1611.4 and 1611.6. As revised, the new provisions do not represent a substantive change, but LSC believes having the basic statements as to who may be found to be financially eligible for assistance in one section makes the regulation much clearer. In addition, where the existing regulation uses a construction that speaks to when a recipient may provide legal assistance, the proposed new language emphasizes the point that the requirements speak only to determinations of financial eligibility and not to decisions regarding whether or not to actually provide legal assistance.

LSC also proposes to incorporate into this section two significant substantive changes to the regulation. First, LSC proposes to include a requirement that,

in making financial eligibility determinations, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets and shall record income and asset information in the manner specified for determining eligibility in proposed § 1611.6. This requirement would replace the process currently required by § 1611.5, whereby a recipient is effectively required to conduct a lengthy and often cumbersome inquiry as to the applicant's income, assets and income prospects, including inquiry into a detailed list of factors relating to an applicant's specific financial situation and ability to afford private counsel. The Working Group discussed this issue at length and representatives of the field noted that conducting such a detailed inquiry in most cases is a task which is often difficult to accomplish efficiently at the point of intake, especially as much of intake is performed by volunteers, interns or receptionists. Rather, many recipients, in practice, conduct a somewhat abbreviated version of the otherwise required process, inquiring into current income, assets, income prospects and probing for additional information on the basis of the responses provided, based upon the requirements of the regulation and their knowledge of the applicant base and local circumstances. This approach, the field representatives noted, is less prone to error and assists in fostering an appropriate attorney-client relationship with individuals accepted as clients. As LSC is not finding widespread instances of service being provided to financially ineligible persons, it was agreed that that the process required by the existing regulation is unduly complicated and that the simplified requirement proposed would be adequate to ensure that recipients are making sufficient inquiry into applicants' financial situations to determine financial eligibility status under the regulation while being less administratively burdensome for recipients and more conducive to the development of the attorney-client relationship. LSC also believes that adoption of the proposed streamlined eligibility determination process will aid the Corporation in conducting compliance reviews.

The other major change is that, consistent with proposed § 1611.3 as discussed above, if adopted, the regulation would permit recipients to determine an applicant to be financially eligible because the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's

governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Level amounts. For many recipients, a significant proportion of applicants rely on governmental benefits for low-income individuals and families as their sole source of income. In order to qualify for these benefits, such persons have already been screened and determined to be financially eligible for those benefits by the agency providing the benefits through an eligibility determination process that is stricter than the one required under LSC regulations. In Working Group discussions, many representatives of the field noted that if they could rely on the determinations made by these agencies without having to otherwise make an independent inquiry into financial eligibility, it would substantially ease the administrative workload involved in making eligibility determinations.

The Working Group also noted that current LSC practice permits recipients to determine that an applicant's assets are within the recipient's asset ceiling level without additional review if the applicant is receiving governmental benefits for low-income individuals and families, eligibility for which includes an asset test. Key to this practice is that the recipient's governing body has to take some identifiable action to recognize the asset test of the governmental benefit program being relied upon. This ensures that the eligibility standards of the other program have been carefully considered and are incorporated into the overall eligibility policies adopted and regularly reviewed by the governing body. As this practice has proved efficient and effective, it was determined that a parallel process could also be adopted for income screening and that these practices should be expressly included in the regulations. It is important to note that this provision would only apply to applicants whose sole income is derived from such benefits. Applicants who also have income derived from other sources would be subject to an independent inquiry and assessment of financial eligibility.

Section 1611.5 Authorized Exceptions to the Annual Income Ceiling

This proposed section provides for authorized exceptions to the annual income ceiling. The proposed language, like the current language of §§ 1611.4 and 1611.5, on which it is based, is permissive. A recipient would be free to include some, none, or all of the authorized exceptions discussed below

in its financial eligibility policies. Thus, to the extent a recipient would choose to avail itself of the authority provided in this proposed section, a recipient would be permitted to determine an applicant to be financially eligible for assistance, notwithstanding that the applicant's income is in excess of the recipient's applicable income ceiling. In making such determinations, however, the recipient would have to determine that the applicant's assets were at or below the recipient's applicable asset ceiling (or the ceiling would have had to have been waived). This requirement is consistent with the current regulation, but would be affirmatively stated for clarity.

Under the proposed section, there would be two situations in which an applicant's income could exceed the recipient's income ceiling without an absolute upper limit: (1) Where the applicant is seeking to maintain governmental benefits for low-income individuals and families; and (2) where the executive director (or his/her designee) determines, on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and, in considering only that portion of the applicant's income which is not so committed, the applicant would otherwise be financially eligible.

The first instance would be a new addition to the regulation. Currently, an applicant seeking to *obtain* governmental benefits for low income persons may be deemed financially eligible if the applicant's income does not exceed 150% of the national eligibility level. The existing regulation, however, does not specifically address applicants seeking to *maintain* such benefits. Thus, under the current regulation, an applicant whose income is over the income ceiling but under 150% of the national eligibility level may be deemed financially eligible for assistance in obtaining benefits, but not for assistance in maintaining them. Thus, the applicant seeking assistance to maintain benefits would have to be turned down, but that same applicant could then be found financially eligible for assistance to re-obtain such benefits once the benefits were lost. Accordingly, LSC proposes to address this problem in the regulation. However, unlike the situation in obtaining the benefits, in seeking to maintain benefits LSC considers an upper limit on income unnecessary since in such cases the applicant's income will necessarily be rather limited (for the applicant to have been eligible in the first place for the

benefits he or she is seeking to maintain).

The second instance is taken from § 1611.5(b)(1)(B) of the current regulation addressing instances in which the applicant's income is primarily devoted to medical or nursing home expenses and does not represent a substantive change in the current regulation. LSC does propose to specify in the regulation, however, that in such cases the recipient is still required to make a determination of financial eligibility with regard to the applicant's remaining income. The existing regulation could be read to permit an applicant with an income of \$300,000 to be deemed financially eligible if \$250,000 of the income is devoted to nursing home expenses, notwithstanding that the applicant's remaining income is \$50,000—substantially in excess of the income ceiling. This situation is not intended, and, indeed, LSC has no reason to believe recipients are serving such persons. However, consistent with the overall goal of clarifying the regulation, LSC believes that a requirement that an applicant must be otherwise financially eligible considering only that portion of the applicant's income which is not devoted to medical or nursing home expenses should be clearly set forth in the regulation.

LSC also proposes to permit exceptions for certain situations in which the applicant's income is in excess of the recipient's applicable income ceiling, but does not exceed 200% of the applicable Federal Poverty Guideline amount. At the outset, LSC notes that this section also proposes to change the current upper income limit of 150% of the national income guidelines amount, which is 150% of 125% of the Federal Poverty Guideline amounts, or 187.5% of the Federal Poverty Guidelines amounts. Under the proposed new regulation, the upper limit would increase to 200% of the Federal Poverty Guidelines amounts. This change is being proposed to further simplify the language of the regulation and in recognition of the changing demographic of the legal services client base, which now increasingly includes the working poor. The Working Group discussed the fact that this action would slightly increase the pool of potential applicants for service but was of the opinion that this would not have a negative impact on the quantity or quality of services delivered.

Turning to the exceptions, LSC proposes to retain the current exception for individuals seeking to obtain governmental benefits for low-income individuals and families. Second, LSC

proposes to add an exception for individuals seeking to obtain or maintain governmental benefits for persons with mental and/or physical disabilities. Many disability benefit programs provide only subsistence support and those individuals should be treated the same way as those seeking to obtain benefits available on the basis of financial need. However, many persons with disabilities who are eligible for disability benefits may not be particularly economically disadvantaged and should not be eligible for legal assistance simply by virtue of the eligibility for such disability benefits. Therefore, those applicants must have incomes below 200% of the applicable poverty level in order to be considered financially eligible for LSC-funded services.

Finally, the proposed regulation maintains the current authorized exceptions found in the factors listed in § 1611.5. Specifically, the recipient may determine an applicant whose income is below 200% of the applicable Federal Poverty Guidelines amount to be financially eligible for legal assistance supported with LSC funds based on one or more enumerated factors that affect the applicant's ability to afford legal assistance. As in the current regulation, recipients would not be required to apply these factors in a "spend down" fashion. That is, although recipients would be permitted to do so, they would not be required to determine that, after deducting the allowable expenses, the applicant's income is below the applicable income ceiling before determining the applicant to be financially eligible. The regulation would also be amended to clarify that the factors apply to the applicant and members of the applicant's household. The factors proposed are identical to the ones in the current regulation, with the following exceptions:

- The factor relating to medical expenses would be restated to make clear that it refers only to unreimbursed medical expenses, but that medical insurance premiums are included;
- The factor relating to employment expenses would be reorganized for clarity and would expressly include expenses related to job training or educational activities in preparation for employment;
- The factor relating to expenses associated with age or disability would no longer refer to resident members of the family as a reference to the applicant or members of the applicant's household is proposed to be incorporated elsewhere in this section of the regulation;

- The factor relating to fixed debts and obligations would be amended to read only "fixed debts and obligations."

With regard to "fixed debts and obligations," the current regulation provides little guidance as to what is meant by this term, except to specifically include unpaid taxes from prior years. LSC proposes to simply use the term "fixed debts and obligations," while providing guidance in the preamble as to what is encompassed by the term. LSC believes that this approach will provide recipients with flexibility in applying the rule, while providing for more guidance than could easily be contained in regulatory text.

Prior guidance from the LSC Office of Legal Affairs has stated that, "in the absence of any regulatory definition or guidance as to the meaning of "fixed debts and obligations," the common meaning of the term applies" and that it encompasses debts fixed as to both time and amount. See Letter of November 1, 1993 from J. Kelly Martin, Assistant General Counsel to Stephen St. Hilaire, Executive Director, Camden Regional Legal Services, Inc. Examples of such "fixed debts and obligations" would include mortgage payments, child support, alimony, and business equipment loan payments. LSC intends that this term should also include rent in addition to mortgage payments. Previous OLA opinions have addressed mortgage payments but not rent and rent has, heretofore, not been considered a fixed debt. LSC now sees no rational distinction between the two for the purposes of this regulation and therefore proposes to treat these expenses in a similar manner.

With respect to taxes, prior to 1983, part 1611 included current taxes along with past due unpaid taxes as a fixed debt. When the regulation was changed in 1983, the reference to taxes was amended to refer only to unpaid prior year taxes. This change was justified on the basis that the § 1611.5 factors were intended to account only for "special circumstances" affecting the ability to afford legal assistance. See 48 FR 54201 at 54203 (November 30, 1983). However, given that other types of expenses included in the list do not seem to be particularly "special" (e.g., mortgage payments; child care expenses), LSC no longer finds this explanation persuasive. Rather, LSC believes that the exclusion of current taxes, but not prior unpaid taxes, from fixed debts and obligations has the effect of punishing those persons who are in compliance with the law in favor of persons who are delinquent in their legal responsibility to pay taxes. Moreover, as noted above, the legal services client base is

increasingly comprises the working poor. Excluding current taxes from fixed debts has a disproportionate effect on applicants who work, versus applicants who do not work. Accordingly, LSC believes that including current taxes in fixed debts is appropriate to address this problem.

As noted above, the Working Group considered whether current taxes should just be excluded from the meaning of the term income, rather than including them as within the meaning of "fixed debts and obligations." Although representatives of the field preferred the former approach, LSC representatives preferred the latter approach. The Corporation has always considered income to be gross income and the eligibility ceilings are based on a gross income standard. Similarly, taxes, whether paid or unpaid, have always been considered within the rubric of the fixed debts and obligations exception. By proposing to include current taxes within the meaning of fixed debts and obligations, LSC proposes to return to the prior usage of that term from 1976 through 1983. However, as noted above, LSC invites comment on this issue.

The term "fixed debts and obligations," however, is not without limit. It is not intended to include expenses, such as food costs, utilities, credit card debt, etc. These types of debts are usually not fixed as to time and amount. Moreover, these sorts of expenses are typical living expenses which have not been, and are not intended to be, included as factors to be considered in assessing the financial eligibility of someone whose income exceeds the recipient's applicable annual income ceiling.

The Working Group considered whether there were additional factors which should be enumerated in this section and several members of the Working Group proposed adding other factors, such as utilities, to the list. Although the Working Group agreed in the end not to propose adding any additional factors, LSC specifically invites comment on this matter.

Section 1611.6 Manner of Determining Eligibility

LSC proposes several revisions to this section. First, LSC proposes to delete the requirement in existing paragraph (a) of this section that LSC eligibility forms and procedures must be approved by the Corporation. It has been LSC's experience that receiving the forms has not enhanced its ability to conduct oversight of recipients. These documents are readily available to LSC from recipients when needed. This

requirement appears only to create unnecessary work for recipients and LSC staff without serving any policy purpose.

LSC also proposes to add a provision to the regulation making clear that a recipient agreeing to extend legal assistance to a client referred from another recipient may rely upon the referring program's determination of financial eligibility, provided that the referring program provides and the receiving program retains a copy of the intake form documenting the financial eligibility of the client. This is the currently accepted practice, but is addressed nowhere in the existing regulation. A similar provision was included in the 1995 NPRM.

Section 1611.7 Change in Financial Eligibility Status

LSC proposes to add language to this section to provide that if a recipient later learns of information which indicates that a client is not, in fact, financially eligible, the recipient must discontinue the representation consistent with the applicable rules of professional responsibility. This addition is being proposed because sometimes, after an applicant has been accepted as a client, the recipient discovers or the client discloses information that indicates that the client was not, in fact, financially eligible for service. This situation is not covered by the existing regulation because the client may not have experienced a change in circumstance, but rather the recipient has discovered new pertinent information about the client. LSC notes that the proposed language, like the current regulation, is not intended to require a recipient to make affirmative inquiry after accepting an applicant as a client for information that would indicate a change in circumstance or the presence of additional information regarding the client's financial eligibility.

The proposed regulation would require that when a client is found to be no longer financially eligible on the basis of later discovered information, the recipient shall discontinue representation supported with LSC funds, if discontinuing the representation is not inconsistent with applicable rules of professional responsibility. This proposed language is parallel to the current requirement regarding discontinuation of representation upon a change in circumstance. LSC wishes to note that, to the extent that discontinuation of representation is not possible because of professional responsibility reasons, a recipient may continue to provide

representation supported by LSC funds. This is currently the case and LSC intends to make no change in the regulation on this point.

In addition, LSC proposes to change the name of this section from "change in circumstances" to "change in financial eligibility status" to reflect the addition of the later discovered information provision.

Section 1611.8 Representation of Groups

The subject of the eligibility of groups for legal assistance supported with LSC funds was one of intense discussion among the members of the Working Group. Prior to 1983, the regulation permitted representation of groups that were either primarily composed of eligible persons, or which had as their primary purpose the furtherance of the interests of persons in the community unable to afford legal assistance. In 1983, the regulation was amended to preclude the use of LSC funds for the representation of groups unless they were composed primarily of individuals financially eligible for service and to add a requirement that any group seeking representation demonstrate that it lacks the funds or the means to obtain the funds to retain private counsel.

Representatives from the field proposed that LSC revise the regulation to once again permit the representation of groups which, although not primarily composed of eligible persons, have as a primary function the delivery of services to, or furtherance of the interests of, persons in the community unable to afford legal assistance. Examples of such a group might be a food bank or a rural community development corporation working to develop affordable housing in an isolated community. Field representatives noted that in such cases, there may not be local counsel willing to provide pro bono representation and that the group might not otherwise be able to afford private counsel. Further, the field representatives noted that restricting recipients to representing with LSC funds only those groups primarily composed of eligible individuals prevents them from providing legal assistance in the most efficient manner possible as other groups may be better able to accomplish results benefitting more members of the eligible community than would representation of eligible individuals or groups composed primarily of such individuals. Field representatives also noted that the rule requires that the group would have to provide information showing that it lacks and has no means of obtaining the funds to

retain private counsel, so that the rule would not permit representation of well funded groups.

The LSC representatives were concerned that allowing the use of LSC funds to support the representation of groups not composed primarily of eligible clients would be problematic. In the examples given, the "primary function" of the group is easily discernable. It may be the case, however, that there is or can be a wide variety of opinion on what the "primary function" of any group is and on what is "in the interests" of the eligible client community. The LSC representatives were concerned that the risk and effort related to articulating and enforcing a necessarily subjective standard would be inappropriate in this case. Rather, LSC representatives were of the opinion that already scarce legal services resources would be better devoted to providing assistance to eligible individuals or groups of eligible individuals. In the end, the Working Group did not achieve consensus on this issue and the Draft NPRM did not propose to permit the representation of groups other than those primarily composed of eligible individuals.

In its deliberations on the Draft NPRM, the Operations and Regulations Committee acknowledged the legitimacy of the concerns of the LSC representatives, but determined that the value of permitting the representation of groups having a primary function of providing services to, or furthering the interests of, those who would be financially eligible outweighed any risks attendant upon such representation. In approving the recommendation of the Committee, the Board directed that the Draft NPRM be amended to propose permitting such representation (including any conforming amendments necessary) prior to publication of the NPRM for comment. This NPRM reflects this direction. LSC specifically invites comment on this issue.

Accordingly, the proposed rule would permit a recipient to provide legal assistance supported with LSC funds to a group, corporation, association or other entity if the recipient has determined that the group, corporation, association or other entity lacks and has not practical means of obtaining private counsel in the matter for which representation is sought and any of the following:

- (1) At least a majority of the group's members are financially eligible for LSC-funded legal assistance; or
- (2) For a non-membership group, at least a majority of the individuals who are forming or operating the group are

financially eligible for LSC-funded legal assistance; or

(3) The group has as its principal function or activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance; or

(4) The group has as its principal function or activity the furtherance of the interests of those persons in the community who would be financially eligible for LSC-funded legal assistance and the representation sought relates to such function or activity.

The first two instances, relating to the eligibility and representation of groups composed primarily of eligible individuals, represent the current practice permitted by current § 1611.5(c). The language of the proposed rule would expressly incorporate the interpretation of "primarily composed" that has developed and been adopted in practice over the years since 1983. In the case of membership groups, at least a majority of the members would have to be eligible; in the case of non-membership groups, at least a majority of members of the governing body would have to be eligible persons. The latter two instances represent the situations permitted by the pre-1983 rule, although the language would be revised to focus on the primary "function" rather than the primary "purpose" of the group. This choice is intended to make the analysis required in determining the permissibility of the representation more objective.

Finally, the proposed rule would retain and restate the current provision of the rule that nothing in this part prohibits a recipient from providing legal assistance to a group without regard to the nature or financial eligibility of the group, if the legal assistance is supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

LSC notes that, as with other aspects of this rule, proposed § 1611.8 does not speak to eligibility of groups for legal assistance under other applicable law and regulations. For example, the eligibility of a group under proposed § 1611.8 does not address issues related to the eligibility of the group under part 1626 of the Corporation's regulations, concerning citizenship and alien status eligibility. Similarly, the fact that a recipient may determine a group to be eligible for legal assistance under this part, does not address other questions relating to permissibility of the representation (*i.e.*, this part does not

confer authority for the representation of group on restricted matters, such as class action lawsuits or redistricting matters, etc.)

The OIG dissents from the proposed § 1611.8. The OIG's position is that, in permitting the representation of groups without a determination of financial eligibility of all group members, the proposed rule allows the representation of ineligible individuals and, therefore, is inconsistent with the LSC Act. The OIG contends that the LSC Act contemplates the representation of individuals, rather than groups. The LSC Act declares Congress's finding that "there is a need to provide equal access to the system of justice in our Nation for *individuals* who seek redress of grievances," Sec. 1001(1) (emphasis added). The LSC Act established the Corporation "for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to *persons* financially unable to afford legal assistance," Sec. 1003(a) (emphasis added). The Corporation is required to "establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several states, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for *individuals* eligible for legal assistance under this title," Sec. 1007(a)(2) (emphasis added.). In addition, the LSC authorizes the Corporation "to provide financial assistance to qualified programs furnishing legal assistance to eligible clients," Sec. 1006(a)(1)(A), and defines an "eligible client" as "any person financially unable to afford legal assistance." Sec. 1002(3). Although the LSC Act refers to "persons," and certain groups, such as corporations may be recognized as "persons" under the law, loose associations of individuals seeking representation as a group are not. Such a group exists only because it has members, that is individuals each of whose financial eligibility can be determined in the same way as any other individual client.

The OIG also expressed concern that the proposed rule does not address another issue growing out of allowing group representation without determining the financial eligibility of all group members. Group membership may, and likely will, change. It is easy to envision a case where a group might be eligible for representation when the case is accepted, but the composition of the group changes and ineligible individuals become the majority of the membership. This is particularly true if, as the proposed rule allows, only more

than 50 percent of the individuals must be eligible when the case is accepted. For example, if a recipient accepts as a client a group of 100 members, with 51 eligible and 49 ineligible members, the eligibility status of the group would change with the departure of but one eligible member. Thus, the OIG is of the opinion that allowing a mere majority of eligible individuals to determine the eligibility of the group, when there is a likelihood that the eligibility status of the group could easily change during the course of the representation, is problematic.

LSC disagrees and believes that the proposed regulatory requirements are consistent with the applicable laws. In particular, LSC believes that the legislative history of the 1977 LSC Act amendments demonstrates that Congress contemplated the representation of groups. In discussing an amendment relating to the prohibition by recipients on organizing, Senator Riegle stated:

A similar clarification is made in section 9(c) (of the Senate Reauthorization Bill) regarding the prohibition on organizing activities. Legal Services should not directly organize groups. However, it should provide full representation, education and outreach to those organized groups who are made up of or which represent eligible clients. This section will remove any inhibition which may have been improperly used to prevent such full representation to groups of the poor.

Congressional Record of October 10, 1977, p. S 16804. In addition, the House Report accompanying the 1997 LSC Act amendments bill states that the bill:

[P]rohibits the use of Corporation funds for direct organizing, but permits advice and legal assistance to clients who may themselves be engaged in such activities.
* * * The Committee recognizes a distinction between proper activities such as (1) assisting groups of poor people to organize by providing advice on matters of incorporation, by-laws, tax problems and other matters essential to the planning of an organization; (2) providing counsel to poor people regarding appropriate behavior for group members; and (3) encouraging poor people aggrieved by particular problems to consider organizing to foster joint solutions to common problems on the one hand, and those activities that are improper on the part of legal services providers in that they usurp the rightful role of poor people as potential members of such organizations, namely, actually initiating the formation or organizing directly, an association, group, or organization.

House Report 95-310 at p. 14.

In terms of demonstrating and documenting eligibility of a group, the

proposed rule would require the program to collect information that reasonably demonstrates that the group meets the eligibility requirements. The OIG also dissents from this position and, for groups comprised of eligible individuals, if group representation as set out in the proposed rule is to be permitted, would require that the eligibility of a majority of the individuals in the group be documented in the same manner as is required for individual clients.

The proposed rule would allow recipients to determine the eligibility of groups by collecting "information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility requirements set forth herein." If LSC determines that groups are eligible for federally funded legal assistance, then, as with individuals, the OIG believes that it is LSC's responsibility to set out the requirements by which such eligibility is to be determined. The OIG believes that the proposed rule does not provide sufficient guidance. In addition, by allowing representation of groups "primarily composed of individuals who are financially eligible for legal assistance," but then allowing that determination of eligibility to be assessed by some undefined "reasonableness" standard (presumably something less than that which is required for a determination of the eligibility of individuals), the proposed rule may result in the representation of groups that are not in fact even primarily composed of eligible clients.

LSC disagrees and believes that the proposed regulatory requirements are consistent with the applicable laws. LSC further notes that the proposed rule would, essentially, codify the current practice relating to financial eligibility and representation of groups primarily composed of eligible individuals, which has not proven to be problematic in the way envisioned by the OIG. LSC does not see why it would prove any more problematic for demonstrating the eligibility of groups which have as a primary function the delivery of services to, or furtherance of the interests of, those who would be financially eligible for legal assistance.

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set forth in the preamble, LSC proposes to amend 45 CFR part 1611 by revising §§ 1611.1 through 1611.8 to read as follows:

PART 1611—FINANCIAL ELIGIBILITY

Sec.

- 1611.1 Purpose.
- 1611.2 Definitions.
- 1611.3 Financial eligibility policies.
- 1611.4 Financial eligibility for legal assistance.
- 1611.5 Authorized exceptions to the annual income ceilings.
- 1611.6 Manner of determining financial eligibility.
- 1611.7 Changes in financial eligibility status.
- 1611.8 Representation of groups.

Authority: 42 U.S.C. 2996e(b)(1), 2996e(b)(3), 2996f(a)(1), 2996f(a)(2); sec. 509(h) of Pub. L. 104–134, 110 Stat. 1321 (1996); Pub. L. 105–119; 111 Stat. 2512 (1998).

§ 1611.1 Purpose.

This part sets forth requirements relating to the financial eligibility of applicants for legal assistance supported with LSC funds and recipients' responsibilities in making financial eligibility determinations. This part is not intended to and does not create any entitlement to service for persons deemed financially eligible. This part also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. This part also sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds.

§ 1611.2 Definitions

Applicable rules of professional responsibility means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

Applicant means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation or association.

Assets means cash or other resources that are readily convertible to cash, which are currently and actually available to the applicant.

Governmental program for low income individuals or families means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

Governmental program for persons with disabilities means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

Income means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is

defined by the recipient. Total cash receipts include, but are not limited to, money, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

§ 1611.3 Financial Eligibility Policies

(a) The governing body of a recipient shall adopt policies consistent with this part for determining the financial eligibility of applicants and groups. The governing body shall review its financial eligibility policies at least once every three years and make adjustments as necessary. The recipient shall implement procedures consistent with its policy.

(b) As part of its financial eligibility policies, every recipient shall specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c)(1) As part of its financial eligibility policies, every recipient shall establish annual income ceilings for individuals and households, which may not exceed one hundred and twenty five percent (125%) of the current official Federal Poverty Level amounts for family units. The Corporation shall annually calculate 125% of the Federal Poverty Guidelines amounts and publish such calculations in the **Federal Register** as a revision to appendix A to this part.

(2) As part of its financial eligibility policies, a recipient may adopt authorized exceptions to its annual

income ceilings consistent with § 1611.5.

(d)(1) As part of its financial eligibility policies, every recipient shall establish reasonable asset ceilings for individuals and households. In establishing asset ceilings, the recipient may exclude consideration of a family's principal residence, vehicles required for work, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

(2) The recipient's policies may provide authority for waiver of its asset ceilings under unusual circumstances and when approved by the recipient's Executive Director, or his/her designee. When the asset ceiling is waived, the recipient shall record the reasons for such waiver and shall keep such records as are necessary to inform the Corporation of the reasons for such waiver.

(e) Notwithstanding any other provision of this Part or the recipient's financial eligibility policies, as part of its financial eligibility policies, every recipient shall specify that in assessing the income or assets of an individual applicant who is a victim of domestic violence, the recipient shall consider only the assets and income of the individual applicant and shall not include any jointly held assets.

(f) As part of its financial eligibility policies, a recipient may adopt policies that permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with § 1611.4(d).

(g) Before establishing its financial eligibility policies, a recipient shall consider the cost of living in the service area or locality and other relevant factors, including but not limited to:

- (1) The number of clients who can be served by the resources of the recipient;
- (2) The population that would be eligible at and below alternative income and asset ceilings; and
- (3) The availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the area.

§ 1611.4 Financial eligibility for legal assistance.

(a) A recipient may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. Nothing in this Part, however, prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the

legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

(b) Consistent with the recipient's financial eligibility policies and this Part, the recipient may determine an applicant to be financially eligible for legal assistance if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to § 1611.3(d)(1), or the applicable asset ceiling has been waived pursuant to § 1611.3(d)(2), and:

(1) The applicant's income is at or below the recipient's applicable annual income ceiling; or

(2) The applicant's income exceeds the recipient's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in § 1611.5, applies.

(c) In making financial eligibility determinations, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. The recipient shall record income and asset information in the manner specified for determining eligibility under § 1611.6.

(d) Consistent with the recipient's policies, a recipient may determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Level amounts and that the governmental program has eligibility standards which include an assets test.

§ 1611.5 Authorized exceptions to the annual income ceiling.

(a) Consistent with the recipient's policies and this Part, a recipient may determine that an applicant whose income exceeds the recipient's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to § 1611.3(c), or the asset ceiling has been waived pursuant to § 1611.3(c)(2) and:

(1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

(2) The Executive Director of the recipient, or his/her designee, has determined on the basis of documentation received by the recipient, that the applicant's income is

primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service; or

(3) The applicant's income does not exceed 200% of the applicable Federal Poverty Level amount and:

(i) The applicant is seeking to obtain governmental benefits for low income individuals and families; or

(ii) The applicant is seeking to obtain or maintain governmental benefits for persons with disabilities; or

(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Level amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

(i) Current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical expenses including medical insurance premiums;

(iii) Fixed debts and obligations;

(iv) Expenses necessary for employment, job training or educational activities in preparation for employment, such as dependent care, transportation, clothing and equipment expenses;

(v) Non-medical expenses associated with age or disability; or

(vi) Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance.

(b) In the event that a recipient determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, the recipient shall document the basis for the financial eligibility determination. The recipient shall keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.

§ 1611.6 Manner of determining financial eligibility.

(a) A recipient shall adopt simple intake forms and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient.

(b) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, a recipient shall

make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(c) When one recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, the receiving recipient is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in § 1611.7 or there is substantial reason to doubt the validity of the original determination, provided that the referring recipient provides and the receiving recipient retains a copy of the intake form documenting the financial eligibility of the client.

§ 1611.7 Change in financial eligibility status.

(a) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

§ 1611.8 Representation of groups.

(a) A recipient may provide legal assistance supported with LSC funds to a group, corporation, association or other entity if the recipient has determined that the group, corporation, association or other entity lacks and has not practical means of obtaining private counsel in the matter for which representation is sought and:

(1) At least a majority of the group's members are financially eligible for LSC-funded legal assistance; or

(2) For a non-membership group, at least a majority of the individuals who are forming or operating the group are

financially eligible for LSC-funded legal assistance; or

(3) The group has as its principal function or activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance; or

(4) The group has as its principal function or activity the furtherance of the interests of those persons in the community who would be financially eligible for LSC-funded legal assistance and the representation sought relates to such function or activity.

(b) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility requirements set forth herein.

(c) Nothing in this part prohibits a recipient from providing legal assistance to a group without regard to the nature or financial eligibility of the group, if the legal assistance is supported by funds other than LSC, and is otherwise permissible under applicable law and regulation.

Appendix A—Legal Services Corporation Poverty Guidelines

Note: Appendix A: The Corporation is not requesting comments on the current Appendix. The Appendix is revised annually, after the Department of Health and Human Services issues the new Federal Poverty Guidelines for that year.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02-29611 Filed 11-21-02; 8:45 am]

BILLING CODE 7050-01-P

DEPARTMENT OF DEFENSE

48 CFR Part 216

[DFARS Case 2001-D013]

Defense Federal Acquisition Regulation Supplement; Provisional Award Fee Payments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address the use of provisional award fee payments under cost-plus-award-fee contracts. The rule provides for

successfully performing contractors to receive a portion of award fees within an evaluation period, prior to an interim or final evaluation for that period.

DATES: DoD will consider all comments received by January 21, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2001-D013 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2001-D013.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602-0289.

SUPPLEMENTARY INFORMATION:

A. Background

Cost-reimbursement contracts containing award fees typically provide for an award fee payment no more frequently than every 6 months. This practice may place an undue financial burden on an otherwise successfully performing contractor. Therefore, the proposed rule provides for the payment of provisional award fees within an evaluation period, prior to an interim or final evaluation for that period. The provisional payments are based on (1) successful evaluations for prior evaluation periods, and (2) the fee determining official's expectation that payment of provisional fee amounts will not reduce the overall effectiveness of the award fee incentive.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to 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 the rule applies only to cost-plus-award-fee contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis. Therefore, DoD has not performed an

initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D013.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 216

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 216 as follows:

1. The authority citation for 48 CFR Part 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 216—TYPES OF CONTRACTS

2. Section 216.405–2 is amended by adding paragraph (b)(3) to read as follows:

216.405–2 Cost-plus-award-fee contracts.

* * * * *

(b) * * *

(3) The CPAF contract may include provisional award fee payments. A provisional award fee payment is a payment made within an evaluation period prior to an interim or final evaluation for that period. The contracting officer may include provisional award fee payments in a CPAF contract on a case-by-case basis, provided those payments'

(A) Are made no more frequently than monthly;

(B) Are limited to no more than—
(1) For the initial award fee evaluation period, 50 percent of the award fee available for that period; and

(2) For subsequent award fee evaluation periods, 80 percent of the evaluation score for the prior evaluation period times the award fee available for the current period, *e.g.*, if the contractor received 90 percent of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72 percent (90 percent x 80 percent) of the award fee available for the current period;

(C) Are superceded by an interim or final award fee evaluation for the applicable evaluation period. If provisional payments have exceeded the

payment determined by the evaluation score for the applicable period, the contractor shall either credit the next payment voucher for the amount of the overpayment or refund the difference to the Government, as directed by the contracting officer; and

(D) May be discontinued, or reduced in such amounts deemed appropriate by the contracting officer, when the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The contracting officer shall notify the contractor in writing of any discontinuance or reduction in provisional award fee payments.

* * * * *

[FR Doc. 02–29466 Filed 11–21–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2002–D013]

Defense Federal Acquisition Regulation Supplement; Indian Incentive Clause—Contract Types

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that the clause permitting incentive payments for use of Indian organizations as subcontractors may be used in all contract types.

DATES: DoD will consider all comments received by January 21, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002–D013 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D013.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.226–7001, Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DoD Contracts, provides for incentive payments to contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors. Paragraph (e) of the clause presently addresses incentive payments under cost-type, cost-plus-incentive-fee, fixed-price incentive, and firm-fixed-price contracts. Application of the Indian Incentive Program is not limited to these contract types; therefore, this proposed rule eliminates the references to contract types to avoid any misconceptions regarding contract types that are not listed.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to 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 the rule is a clarification of existing policy regarding the Indian Incentive Program. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D013.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 252 as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.226–7001 is amended by revising the clause date and paragraph (e) to read as follows:

252.226–7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DoD Contracts.

* * * * *

Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DOD Contracts (XXX 2002)

* * * * *

(e)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an adjustment under the Indian Incentive Program.

(2) The amount of the adjustment that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization or Indian-owned economic enterprise.

(3) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(4) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization or Indian-owned economic enterprise.

* * * * *

[FR Doc. 02–29465 Filed 11–21–02; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register

Vol. 67, No. 226

Friday, November 22, 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

Animal and Plant Health Inspection Service

[Docket No. 01-025-2]

Monsanto Co.; Availability of Determination of Nonregulated Status for Cotton Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Monsanto Company cotton designated as Event 15985, which has been genetically engineered for insect resistance, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Monsanto Company in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice. This notice also announces the availability of our written determination and our finding of no significant impact.

EFFECTIVE DATE: November 5, 2002.

ADDRESSES: You may read a copy of the determination, an environmental assessment and finding of no significant impact, the petition for a determination of nonregulated status submitted by Monsanto Company, and all comments received on the petition and the environmental assessment in our reading room. The reading room is located in room 1141, 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 that someone is

available 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.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. David Heron, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-5141. To obtain a copy of the determination or environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734-4885; e-mail: Kay.Peterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2000, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 00-342-01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for cotton (*Gossypium hirsutum L.*) designated as Bollgard II Cotton Event 15985 (event 15985), which has been genetically engineered for resistance to certain lepidopteran insect pests. The Monsanto petition states that the subject cotton should not be regulated by APHIS because it does not present a plant pest risk.

On March 18, 2002, APHIS published a notice in the **Federal Register** (67 FR 11973-11974, Docket No. 01-025-1) announcing that the Monsanto petition and an environmental assessment (EA) were available for public review. That notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject cotton and food products developed from it. APHIS received seven comments on the petition and the EA during the 60-day comment period, which ended May 17, 2002. The comments were received from university entomologists and extension specialists, an agricultural services company, and a consumer advocacy group. Six comments were in support of the subject petition, and one comment was critical of the EA prepared for the proposed determination of nonregulated status. The commenters supporting nonregulated status for the subject

cotton emphasized its effectiveness in insect control and the related reductions in insecticide applications, the importance of the two *Bacillus thuringiensis* (Bt) toxins in high dose insect resistance management strategies, its usefulness in integrated pest management, the absence of the risk of development of a new plant pest, and the similarities in the environmental effects of event 15985 cotton to traditionally-bred varieties. One commenter stated that the EA prepared for the petition was inadequate and the preparation of an environmental impact statement was necessary because allowing large-scale commercialization of this cotton constituted a major Federal action that would significantly impact the environment. The alleged inadequacies in the EA included failures to address the cumulative effects of gene stacking, the concerns of organic farmers, and the environmental impacts of the approval of a so-called illegal grant of the genetic resource of insect susceptibility to Bt from the public trust into the possession of commercial entities. We have provided a response to these comments as an attachment to our finding of no significant impact (FONSI), which is available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Cotton event 15985 has been genetically engineered to express a Cry2Ab insecticidal protein derived from the common soil bacterium *B. thuringiensis* subsp. *kurstaki* (Btk). The petitioner states that the Cry2Ab protein is effective in providing protection from the feeding of lepidopteran insect pests such as tobacco budworm, pink bollworm, and cotton bollworm. The subject cotton event also expresses the β -D-glucuronidase (GUS) protein used as a selectable marker. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens*. Particle acceleration technology was used to transfer the added genes into the recipient Delta and Pine Land Company variety 50B (DP50B). Cotton cultivar DP50B expresses a Btk Cry1Ac insecticidal protein and a NPTII selectable marker protein, and was developed from cotton event 531, which was deregulated by APHIS in 1995 (APHIS No. 94-308-01p).

Cotton event 15985 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This cotton has been field tested since 1998 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject cotton, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Monsanto, a review of other scientific data, field tests of the subject cotton, and comments submitted by the public, APHIS has determined that cotton event 15985: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than cotton developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject cotton and any progeny derived from hybrid crosses with other nontransformed cotton varieties will be as safe to grow as cotton in traditional breeding programs that is not subject to regulation under 7 CFR part 340.

The effect of this determination is that Monsanto's cotton event 15985 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject cotton or its progeny. However, importation of cotton event 15985 and seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine the potential environmental impacts associated with a determination of nonregulated status for Monsanto's cotton event 15985. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions

of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to its determination that cotton event 15985 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

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

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29752 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–100–2]

Aventis CropScience; Extension of Determination of Nonregulated Status for Canola Genetically Engineered for Male Sterility, Fertility Restoration, and Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to additional canola events our determination that certain canola events developed by Aventis CropScience, which have been genetically engineered for male sterility, fertility restoration, and tolerance to the herbicide glufosinate, are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by Aventis CropScience in its request for an extension of a determination of nonregulated status, an analysis of other scientific data, and a comment received from the public in response to a previous notice. This notice also announces the availability of our finding of no significant impact.

EFFECTIVE DATE: December 23, 2002.

ADDRESSES: You may read the extension request, the environmental assessment and finding of no significant impact, and the comment received 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. James White, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5490. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, “Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests,” regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered “regulated articles.”

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On July 25, 2001, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 01–206–01p) from Aventis CropScience (Aventis) of Research Triangle Park, NC, for canola (*Brassica napus* L.) transformation events designated as MS1 and RF1 and RF2, which have been genetically engineered for male sterility (MS1), fertility restoration (RF1 and RF2), and tolerance

to the herbicide glufosinate (MS1, RF1, and RF2). Aventis requested an extension of a determination of nonregulated status issued in response to APHIS petition number 98-278-01p for male sterile canola transformation event MS8 and fertility restoration canola transformation event RF3, the antecedent organisms (see 64 FR 15337-15338, Docket No. 98-114-2, published March 31, 1999), which are also tolerant to the herbicide glufosinate. Based on the similarity of canola events MS1 and RF1 and RF2 to the antecedent organisms, Aventis requested a determination that MS1 and RF1 and RF2 do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On February 25, 2002, APHIS published a notice in the **Federal Register** (67 FR 8509-8510, Docket No. 01-100-1), announcing that an environmental assessment (EA) for the Aventis extension request had been prepared and was available for public comment. APHIS received one comment on the subject EA during the designated 30-day public comment period, which ended March 27, 2002. The comment, which was from a consumer organization, cited alleged deficiencies in the EA prepared for the antecedent organism and the EA for events MS1 and RF1 and RF2. APHIS has provided a response to this comment as an attachment to the finding of no significant impact (FONSI). The EA and FONSI are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Analysis

Like the antecedent organisms, canola events MS1 and RF1 and RF2 have been genetically engineered to contain a *barnase* gene (MS1) for male sterility or a *barstar* gene (RF1 and RF2) for fertility restoration. The *barnase* gene expresses a ribonuclease that blocks pollen development and results in a male-sterile plant, and the *barstar* gene encodes a specific inhibitor of this ribonuclease and restores fertility. The *barnase* and *barstar* genes were derived from *Bacillus amyloliquefaciens*, and are linked in the subject canola events to the *bar* gene derived from *Streptomyces hygroscopicus*. The *bar* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. The subject canola events and the antecedent organisms were developed through use of the *Agrobacterium tumefaciens* method, and expression of the added genes in MS1 and RF1 and RF2 and the

antecedent organisms is controlled in part by gene sequences derived from the plant pathogen *A. tumefaciens*. In summary, the Aventis extension request states that canola events MS1 and RF1 and RF2 and the antecedent organisms contain the same genetic elements with the exception of the antibiotic resistance marker gene *nptII* in MS1 and RF1 and RF2, which was used as a transformant selection tool during the developmental process. The parental variety Drakkar was used to develop both the antecedent organisms and MS1 and RF1 and RF2.

Canola events MS1 and RF1 and RF2 and the antecedent organisms were genetically engineered using the same transformation method and contain the same enzymes for male sterility, fertility restoration, and glufosinate herbicide tolerance. Accordingly, we have determined that canola events MS1 and RF1 and RF2 are similar to the antecedent organisms in APHIS petition number 98-278-01p, and that canola events MS1 and RF1 and RF2 should no longer be regulated under the regulations in 7 CFR part 340.

The subject canola events have been considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain gene sequences derived from a plant pathogen. However, canola events MS1 and RF1 and RF2 have been field tested in numerous countries, including the United States and Canada, and after having received the appropriate Canadian approvals, have been marketed commercially in Canada since 1996 with no reports of adverse effects on human health or the environment.

Determination

Based on an analysis of the data submitted by Aventis and a review of other scientific data, APHIS has determined that canola events MS1 and RF1 and RF2: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become a weed than canola varieties developed by traditional breeding techniques and are unlikely to increase the weediness potential for any other cultivated or wild species with which they can interbreed; (3) will not cause damage to raw or processed agricultural commodities; (4) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture; and (5) are unlikely to have any significant adverse impact on agricultural practices. Therefore, APHIS has concluded that canola events MS1 and RF1 and RF2 and any progeny derived from crosses with other canola varieties will be as safe to grow as canola that is not subject to regulation under 7 CFR part 340.

Because APHIS has determined that the subject canola events do not present a plant pest risk based on their similarity to the antecedent organisms, Aventis' canola events MS1 and RF1 and RF2 will no longer be considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject canola events or their progeny. However, importation of canola events MS1 and RF1 and RF2 and seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine any potential environmental impacts associated with the proposed extension of a determination of nonregulated status for the subject canola events. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to the determination that Aventis canola events MS1 and RF1 and RF2 and events developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

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

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02-29754 Filed 11-21-02; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01-101-2]

Aventis CropScience; Extension of Determination of Nonregulated Status for Canola Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to one additional canola event our determination that a canola event developed by Aventis CropScience, which has been genetically engineered for tolerance to the herbicide glufosinate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by Aventis CropScience in its request for an extension of a determination of nonregulated status, an analysis of other scientific data, and a comment received from the public in response to a previous notice. This notice also announces the availability of our finding of no significant impact.

EFFECTIVE DATE: December 23, 2002.

ADDRESSES: You may read the extension request, the environmental assessment and finding of no significant impact, and the comment received 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. James White, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-5490. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734-4885; e-mail: Kay.Peterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is

reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On July 25, 2001, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 01-206-02p) from Aventis CropScience (Aventis) of Research Triangle Park, NC, for a canola (*Brassica napus L.*) transformation event designated as Topas 19/2 (event Topas 19/2), which has been genetically engineered for tolerance to the herbicide glufosinate. Aventis requested an extension of a determination of nonregulated status issued previously for glufosinate-tolerant canola transformation event T45, the antecedent organism, in response to APHIS petition number 97-205-01p (see 63 FR 6703-6704, Docket No. 97-091-2, published February 10, 1998). Based on the similarity of canola event Topas 19/2 to the antecedent organism, Aventis requested a determination that glufosinate-tolerant canola event Topas 19/2 does not present a plant pest risk and, therefore, is not a regulated article under APHIS—regulations in 7 CFR part 340.

On March 1, 2002, APHIS published a notice in the **Federal Register** (67 FR 9431-9432, Docket No. 01-101-1) announcing that an environmental assessment (EA) for the Aventis extension request had been prepared and was available for public comment. APHIS received one comment on the subject EA during the designated comment period which ended April 1, 2002. We have provided a response to this comment as an attachment to our finding of no significant impact (FONSI). The EA and FONSI, including the attachment, are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Analysis

Like the antecedent organism, canola event Topas 19/2 has been genetically engineered to contain a *pat* gene derived

from *Streptomyces viridochromogenes*. The *pat* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. The subject canola event and the antecedent organism were developed through use of the *Agrobacterium tumefaciens* method, and expression of the added genes in Topas 19/2 and the antecedent organism is controlled in part by gene sequences derived from the plant pathogen cauliflower mosaic virus. In summary, canola event Topas 19/2 and the antecedent organism contain the same genetic elements with the exception of the antibiotic resistance marker gene *nptII* in Topas 19/2, which was used as a transformant selection tool during the developmental process. The parental variety used to develop the antecedent organism was the *B. napus* var. AC EXCEL, while the *B. napus* cultivar Topas was used for transforming canola event Topas 19/2.

Canola event Topas 19/2 and the antecedent organism were genetically engineered using the same transformation method and contain the same enzyme that makes the plants tolerant to the herbicide glufosinate. Accordingly, we have determined that canola event Topas 19/2 is similar to the antecedent organism in APHIS petition number 97-205-01p, and, therefore, that canola event Topas 19/2 should no longer be regulated under the regulations in 7 CFR part 340.

The subject canola event has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, canola event Topas 19/2 has been extensively field tested in Canada, and after having received the appropriate Canadian approvals, has been marketed commercially in Canada since 1995 with no reports of adverse effects on human health or the environment.

Determination

Based on an analysis of the data submitted by Aventis and a review of other scientific data, APHIS has determined that canola event Topas 19/2: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than the parental canola variety; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that canola event

Topas 19/2 and any progeny derived from crosses with other canola varieties will be as safe to grow as canola that is not subject to regulation under 7 CFR part 340.

Because APHIS has determined that the subject canola event does not present a plant pest risk based on its similarity to the antecedent organism, Aventis canola event Topas 19/2 will no longer be considered a regulated article under APHIS regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject canola event or its progeny. However, importation of canola event Topas 19/2 and seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine any potential environmental impacts associated with the extension of a determination of nonregulated status for the subject canola event. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to the determination that Aventis' canola event Topas 19/2 and events developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the Aventis extension request and the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

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

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–29755 Filed 11–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Fork Eel Grazing Allotments EIS—Six Rivers National Forest

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: This notice is a revision of the original notice of intent (67 FR 68089) published in the **Federal Register** on November 8, 2002. The Six Rivers National Forest will prepare an environmental impact statement (EIS) on a proposal to authorize grazing of up to 396 Animal Units on five allotments encompassing approximately 72,558 acres of National Forest System lands in the North Fork Eel River Watershed in Trinity County, California. The allotments within the analysis area include the Hoaglin, Soldier Creek, Zenia, Long Ridge and Van Horn. Portions of the latter four allotments extend into adjacent watersheds. Three units of the Van Horn Allotment located within the Upper Mad River Watershed will be evaluated in a separate environmental analysis. The analysis area is located in all or portions of the following townships: T2SR6E, T2SR7E, T3SR6E, T3SR7E, T3SR8E, T4S6E, T4S7E, T4SR8E, T5SR6E, T5SR7E, Humboldt Meridian; T25NR12W, Mount Diablo Meridian.

The purpose of this analysis is to evaluate the grazing management on five allotments within the North Fork Eel River watershed and to determine the level and conditions of grazing to be authorized on federal lands. The needs are to meet resource protection and enhancement goals in the Six Rivers National Forest Land and Resource Management Plan (LRMP), to manage for healthy rangeland ecosystems and to authorize grazing in a manner that maintains or improves rangeland productivity and desirable species while reducing noxious weeds. If approved, the Six Rivers National Forest would authorize grazing through term grazing permits for up to 10 years. The EIS will be designed to satisfy the requirements of the Federal Land Policy and Management Act of 1976 and implementing regulations (43 CFR 2310.1).

DATES: Comments concerning the scope of the analysis must be received on or before 30 days after publication of this notice in the **Federal Register**. The draft environmental impact statement is expected in March 2003 and the final environmental impact statement is expected in June 2003.

ADDRESSES: Send written comments to S.E. "Lou" Wolterling, Forest Supervisor, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501–3834. For further information, mail correspondence to Ruben Escatell, EIS Team Leader, Mad River Ranger District, Star Route Box 300, Bridgeville, CA 95526. A public meeting scheduled for December 3, 2002 will be held at the

Mad River Community Hall located at 155–C Van Duzen Road, Mad River, CA 95552. Comments may be mailed electronically to rescatell@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Ruben Escatell or Clara Bambauer Cross, EIS Team Leaders at (707) 574–6233.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this analysis is to evaluate the grazing management on five allotments within the North Fork Eel River watershed and to determine the level and conditions of grazing to be authorized on federal lands managed by the Six Rivers National Forest, Mad River Ranger District. The allotments within the project area are Hoaglin, Long Ridge, Soldier Creek, Van Horn and Zenia. There is a need to meet resource protection and enhancement goals in the Six Rivers National Forest LRMP through the implementation of Allotment Management Plans (AMPs) developed from this analysis, while protecting outstandingly remarkable values associated with the segment of the North Fork Eel River designated as Wild under the Wild and Scenic Rivers Act (1968). The goals and values of the LRMP include the following:

- Maintenance of water quality for aquatic ecosystems, particularly anadromous fish.
- Protection of heritage resources.
- Protection of habitat for wildlife and plant species of concern.
- Maintenance of values associated with inclusive Wilderness and Wild River designations.
- Maintenance of economic stability for the local community that relies on public rangelands.
- Fulfillment of a trust responsibility to the Round Valley Indian Tribes to manage grazing activities and policies so as to not adversely impact tribal trust properties and rights downriver of the analysis area.

There is also a need to manage for healthy rangeland ecosystems, and to authorize grazing in a way that maintains or improves rangeland productivity and desirable species while reducing noxious weeds.

A number of laws provide direction for grazing on public lands, including the Multiple-Use Sustained Yield Act (1960), the Wilderness Act (1964), the California State Wilderness Act (1984), the Forest and Rangeland Renewable Resources Planning Act (1974), the Federal Land Policy and Management Act (1976), and the National Forest Management Act (1976). The Six Rivers National Forest LRMP also contains provisions to implement this direction.

Proposed Action

The Forest Service proposes to authorize grazing of up to 396 Animal Units on National Forest Systems lands on five cattle allotments within the North Fork Eel River watershed and prepare Allotment Management Plans to incorporate the elements included within the resulting decision. Grazing practices and construction or restoration of range improvements would be prescribed to protect and maintain water quality, anadromous fish habitat, and heritage sites, as well as improve livestock distribution to enhance rangeland health.

Responsible Official

S.E. "Lou" Woltering, Forest Supervisor, Six Rivers National Forest, USDA Forest Service, 1330 Bayshore Way, Eureka, CA 95501-3834, is the Responsible Official for any decision to authorize grazing and manage rangelands in the five cattle allotments within the North Fork Eel River watershed on National Forest system lands. He will document his decisions and rationale in a Record of Decision.

Nature of Decision To Be Made

The Forest Supervisor will make the following decision: whether or not to authorize cattle grazing in allotments within the North Fork Eel River watershed, and if so, the terms and conditions required for the term grazing permits and AMPs.

Scoping Process

The public is encouraged to take part in the scoping process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. A public meeting will be held to provide information on the proposal as well as on how to provide input to this analysis. The meeting will be held in Mad River, California at the Mad River Community Hall on December 3, 2002 from 6 to 8 p.m. Information from the meeting will be used in the preparation of the draft and final EIS.

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.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 18, 2002.

Jerry Boberg,

Acting Forest Supervisor, Six Rivers National Forest.

[FR Doc. 02-29730 Filed 11-21-02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE**Forest Service****Eastern Arizona Counties Resource Advisory Committee**

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in Globe, Arizona. The purpose of the meeting is to review possible projects for funding and approve operating guidelines including the next meeting date.

DATES: The meeting will be held December 6, 2002, at 1 p.m.

ADDRESSES: The meeting will be held at the Gila County Courthouse in the Board of Supervisors hearing room, 1400 East Ash, Globe, Arizona 85501. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, PO Box 640, Springerville, Arizona 85938 or electronically to rdyson@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333-4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Public Law 106-393 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Opportunity for public input will be provided.

Dated: November 18, 2002.

John C. Bedell,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 02-29728 Filed 11-21-02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE**Forest Service****Siuslaw Resource Advisory Committee****AGENCY:** Forest Service, USDA.**ACTION:** Notice of Meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will meet in Corvallis, OR. The purpose of the meeting is to determine how to spend Title II Payments to Counties Funds. The agenda includes: how to distribute the balance of Title II funds; kinds of projects the RAC would like to see from the Forest Service; how much Title II money should be used on private lands versus public lands; the cost of NEPA implementation for public projects; and a public forum.

DATES: The meeting will be held December 13, 2002, beginning at 9 a.m.

ADDRESSES: The meeting will be held in the Siuslaw river Room, at the Siuslaw National Forest Headquarters, at 4077 SW Research Way, Corvallis, OR.

FOR FURTHER INFORMATION CONTACT:

Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/750-7210 or write to Forest Supervisor, Siuslaw National Forest, PO Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: A public input period will begin at 11:45 a.m. The meeting is expected to adjourn a few minutes after 12 noon.

Dated: November 18, 2002.

Gloria Brown,*Forest Supervisor.*

[FR Doc. 02-29735 Filed 11-21-02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE**Grain Inspection, Packers and Stockyards Administration****[02-b]****Cancellation of Oregon's Designation, Request for Comments on the Need for Official Service in Oregon, and the Opportunity for Designation in the Oregon Area****AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.**ACTION:** Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The Oregon Department of Agriculture

(Oregon), is designated to provide official inspection services until June 30, 2005, according to the Act. Oregon informed Grain Inspection, Packers and Stockyards Administration (GIPSA) that they will cease providing official inspection effective November 27, 2002. Accordingly, GIPSA is announcing that Oregon's designation terminates effective November 27, 2002. GIPSA is also asking for comments on the need for service in the area, and asking for applicants for service in the area.

DATES: Applications and comments must be postmarked or electronically dated on or before December 23, 2002.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, room 1647-S, 1400 Independence Ave. SW., Washington, DC 20250-3604; FAX 202-690-2755; e-mail Janet.M.Hart@usda.gov.

FOR FURTHER INFORMATION CONTACT:

Janet M. Hart at 202-720-8525, e-mail Janet.M.Hart@usda.gov.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Oregon, main office in Salem, Oregon, to provide official inspection services under the Act on July 1, 2002.

Section 7(g)(1) of the Act provides that designations of official agencies will end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Oregon ends on June 30, 2005, according to the Act. However, Oregon advised GIPSA that they will close their sole specified service point in Pendleton, Oregon, on November 27, 2002. Accordingly, GIPSA is canceling Oregon's designation effective November 27, 2002, asking for comments on the need for official service in Oregon, and asking for applicants to provide service. GIPSA will select an applicant for service only if there is a demonstrated need.

Pursuant to Section 7(f)(2) of the Act, the following geographic area is open for designation; the entire State of

Oregon, except those export port locations within the State which are serviced by GIPSA. Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, <http://www.usda.gov/gipsa/oversight/parovreg.htm>.

Any firms in Oregon that require official service after November 27, 2002 should contact GIPSA's Portland Field Office at 503-326-7887.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 6, 2002.

Donna Reifschneider,*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 02-29756 Filed 11-21-02; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE**Grain Inspection, Packers and Stockyards Administration****[02-04-A]****Opportunity for Designation in the Kansas, Minot (ND), and Tri-State (OH) Areas, and Request for Comments on the Official Agencies Serving These Areas****AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.**ACTION:** Notice.

SUMMARY: The designations of the official agencies listed below will end in June 2003. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies: Kansas Grain Inspection Service, Inc., (Kansas); Minot Grain Inspection, Inc., (Minot); and Tri-State Grain Inspection Service, Inc., (Tri-State).

DATES: Applications and comments must be postmarked or electronically dated on or before January 2, 2003.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW.,

Washington, DC 20250-3604; FAX 202-690-2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647-S, 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202-720-8525, e-mail Janet.M.Hart@usda.gov.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to

provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official agency	Main office	Designation start	Designation end
Kansas	Topeka, KS	07/01/2000	06/30/2003
Minot	Minot, ND	07/01/2000	06/30/2003
Tri-State	Cincinnati, OH	07/01/2000	06/30/2003

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Colorado, Kansas, Nebraska, and Wyoming, is assigned to Kansas.

The entire State of Colorado.
The entire State of Kansas.
In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

Goshen, Laramie, and Platt Counties, Wyoming.

Kansas' assigned geographic area does not include the following grain elevators inside Kansas' area which have been and will continue to be serviced by the following official agency: Hastings Grain Inspection, Inc.; Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Minot.

Bounded on the North by the North Dakota State line east to State Route 14;

Bounded on the East by State Route 14 south to State Route 5; State Route 5 east to State Route 60; State Route 60 southeast to State Route 3; State Route 3 south to State Route 200;

Bounded on the South by State Route 200 west to State Route 41; State Route 41 south to U.S. Route 83; U.S. Route 83

northwest to State Route 200; State Route 200 west to U.S. Route 85; U.S. Route 85 south to Interstate 94; Interstate 94 west to the North Dakota State line; and

Bounded on the West by the North Dakota State line.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Harvey Farmers Elevator, Harvey, Wells County (located inside Grand Forks Grain Inspection Department, Inc.'s, area); and Benson Quinn Company, Underwood, and Falkirk Farmers Elevator, Washburn, both in McLean County (located inside Grain Inspection, Inc.'s, area).

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Indiana, Kentucky, and Ohio, is assigned to Tri-State.

Dearborn, Decatur, Franklin, Ohio, Ripley, Rush (south of State Route 244), and Switzerland Counties, Indiana.

Bath, Boone, Bourbon, Bracken, Campbell, Clark, Fleming, Gallatin, Grant, Harrison, Kenton, Lewis (west of State Route 59), Mason, Montgomery, Nicholas, Owen, Pendleton, and Robertson Counties, Kentucky.

In Ohio:

Bounded on the North by the northern Preble County line east; the western and northern Miami County lines east to State Route 296; State Route 296 east to State Route 560; State Route 560 south to the Clark County line; the northern Clark County line east to U.S. Route 68;

Bounded on the East by U.S. Route 68 south to U.S. Route 22; U.S. Route 22 east to State Route 73; State Route 73 southeast to the Adams County line; the eastern Adams County line;

Bounded on the South by the southern Adams, Brown, Clermont, and Hamilton County lines; and

Bounded on the West by the western Hamilton, Butler, and Preble County lines.

2. Opportunity for Designation

Interested persons, including Kansas, Minot, and Tri-State, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder.

Designation in the specified geographic areas is for the period beginning July 1, 2003, and ending June 30, 2006. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, <http://www.usda.gov/gipsa/oversight/parovreg.htm>.

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Kansas, Minot, and Tri-State official agencies. Commenters are encouraged to submit pertinent data concerning these official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 13, 2002.
Donna Reifschneider,
Administrator, Grain Inspection, Packers and Stockyards Administration.
 [FR Doc. 02-29757 Filed 11-21-02; 8:45 am]
BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02-02-S]

Designation for the Alabama, California, Kankakee (IL), Springfield (IL), and Washington Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Alabama Department of Agriculture and Industries (Alabama);
 California Department of Food and Agriculture (California);

Kankakee Grain Inspection, Inc. (Kankakee);
 Springfield Grain Inspection, Inc. (Springfield); and
 Washington Department of Agriculture. (Washington).

EFFECTIVE DATES: January 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202-720-8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 3, 2002, **Federal Register** (67 FR 38249), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by July 1, 2002.

Alabama, California, Kankakee, and Washington were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them. There were two applicants for the Springfield area: Springfield applied for all of the area currently assigned to them, and Keokuk Grain Inspection Service (Keokuk), a designated official agency, applied for Cass and Schuyler Counties. GIPSA asked for comments on the applicants for service in the September 3, 2002, **Federal Register** (67 FR 13599). Comments were due by October 1, 2002. GIPSA received no comments by the due date.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Alabama, California, Kankakee, Springfield, and Washington are able to provide official services in the geographic areas specified in the June 3, 2002, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start—end
Alabama	Montgomery, AL, Additional Service Locations: Decatur, Mobile, AL, 334-415-2531	01/01/2003-12/31/2005
California	Sacramento, CA, Additional Service Locations: Bell, Corcoran, Imperial, Stockton, West Sacramento, Williams, CA, 916-654-0743.	01/01/2003-12/31/2005
Kankakee	Essex, IL, Additional Service Location: Tiskilwa, IL, 815-365-2268	01/01/2003-12/31/2005
Springfield	Springfield, IL, 217-522-5278	01/01/2003-12/31/2005
Washington	Olympia, WA, Additional Service Locations: Colfax, Kalama, Pacso, Seattle, Spokane, Tacoma, Tumwater, Vancouver, WA, 360-902-1921.	01/01/2003-12/31/2005

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 13, 2002.
Donna Reifschneider,
Administrator, Grain Inspection, Packers and Stockyards Administration.
 [FR Doc. 02-29758 Filed 11-21-02; 8:45 am]
BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of a Public Meeting on Implementation of Section 9006 of the Farm Security and Rural Investment Act of 2002

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency in the Rural Development Mission Area of the United States Department of Agriculture, will hold a public meeting entitled "Expanding Rural Renewable Energy Systems." The purpose of this event is to initiate a dialogue about how to implement a loan guarantee, direct loan, and grant program to finance

renewable energy systems and make energy efficiency improvements. Section 9006 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-71) (the Act) provides \$23 million annually for this purpose. The program will be made available to farmers, ranchers, and rural small businesses. We anticipate that this program will support energy self-sufficiency and promote rural economic development.

DATES: The meeting will be held on December 3, 2002. Registration will start at 8:30 a.m.; the program will begin at 9 a.m. and conclude by 3 p.m.

ADDRESSES: Jefferson Auditorium, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC. Participants should enter the building through the 4th wing entrance of the South Building located on Independence Avenue between 12th and 14th Street. Valid photo identification is required for clearance by building security personnel.

INSTRUCTIONS FOR PARTICIPATION:

Although registration is encouraged, walk-ins will be accommodated to the extent that space permits. Registered participants will be given priority for making presentations prior to walk-ins. Anyone interested in renewable energy systems and energy efficiency improvements is encouraged to attend the public meeting. Presentations will be limited to 10 minutes in duration. To register and request time for an oral statement, contact Elsa De Leon, Office of the Deputy Administrator for Business Programs, Room 5050 South Agriculture Building, Stop 3220, 1400 Independence Avenue SW., Washington, DC 20250-3220; Email: elsa.deleon@usda.gov; Telephone: 202-720-0813. To submit comments by email, send to pandor.hadjy@usda.gov in an ASCII file. Written comments should follow the issues described in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Assistant Deputy Administrator, Business Programs, RBS, Room 5050 South Agriculture Building, Stop 3220, 1400 Independence Avenue, SW., Washington, DC 20250-3220, telephone: 202-720-9693.

SUPPLEMENTARY INFORMATION: The oral and written information obtained from interested parties will be considered in implementing provisions of Section 9006 of the 2002 Act, which authorizes the Department to make loan guarantees, loans, and grants to farmers, ranchers, and rural small businesses for renewable energy systems and energy efficiency improvements. In order to

assure that the Act is implemented to meet constituent needs, RBS is sponsoring a listening forum and soliciting written comments to encourage public participation in gathering input and comments and in making recommendations on program implementation. All comments are welcome, and no attempt will be made to establish a consensus.

RBS is particularly interested in receiving comments on the following specific issues as they relate to Section 9006:

1. The Act stipulates that financial assistance may be provided to purchase renewable energy systems and make energy efficiency improvements.

—What projects should be eligible for funding?

—Should certain types of projects receive priority for funding?

—Should preference be given to new, innovative technologies or proven technologies?

2. Loan guarantees, direct loans, and grant programs are authorized under the legislation.

—What type of financial assistance is most in need (*i.e.*, grants, direct loans, or loan guarantees)?

3. Section 9006 states that, in determining the amount of grant or loan, the Secretary shall take into consideration as applicable:

a. The type of renewable energy system to be purchased;

b. The estimated quantity of energy to be generated by the renewable energy system;

c. The expected environmental benefits of the renewable energy system;

d. The extent to which the renewable energy system will be replicable;

e. The amount of energy savings expected to be derived from the activity, as demonstrated by an energy audit comparable to an energy audit under Section 9005 of the Act;

f. The estimated length of time it would take for energy savings generated by the activity to equal the cost of the activity; and

g. Other factors as appropriate.

—What other factors, if any, should the Department consider in determining the amount of grant or loan?

—Should certain types of projects or geographic areas be targeted and given preference for financial assistance?

4. The Act states that the amount of grant shall not exceed 25 percent of the cost of the activity funded under the program. Additionally, the combined amount of a grant and loan made or guaranteed shall not exceed 50 percent of the cost of the activity funded.

—What are various sources of program matching funds (*i.e.*, other Federal, State, local, or private programs)?

Those who wish to make oral presentations should restrict their presentation to 10 minutes and are encouraged to have written copies of their complete comments, including exhibits, for inclusion in the Agency record. Those who register their attendance at the meeting, but have not been scheduled in advance to present oral testimony, will be given an opportunity to do so if time permits. Otherwise, the opportunity will be given to submit their views in writing prior to December 6, 2002. Participants who require a sign language interpreter or other special accommodations should contact Ms. De Leon as directed above.

Copies of the presentations will not be available for distribution from the Department. However, they will be available for public inspection in Room 5050 South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours, 8 a.m. to 4:30 p.m. EST.

Dated: November 18, 2002.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 02-29703 Filed 11-21-02; 8:45 am]

BILLING CODE 3410-XY-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

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

ACTION: Proposed addition to Procurement List.

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

Comments Must be Received on or Before: December 22, 2002.

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

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603-7740.

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

If the Committee approves the proposed addition, the entity of the Federal Government identified in the notice for the service will be required to procure the service listed below from nonprofit agency 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 service to the Government.
2. If approved, the action will result in authorizing small entities to furnish the service 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. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Food Service, 105th Airlift Wing, Newburgh, New York.

NPA: Occupations, Inc., Middletown, New York.

Contract Activity: 105th Airlift Wing/LGC, Newburgh, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02-29770 Filed 11-21-02; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

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

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List

products previously furnished by such agencies.

EFFECTIVE DATE: December 22, 2002.

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

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603-7740.

SUPPLEMENTARY INFORMATION:

Additions

On September 13, September 20, and September 27, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 F.R. 58014, 59249, 61066 and 61067) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

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

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

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

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Braided Nylon, Type II Parachute Cord

4020-00-262-2019

NPA: East Texas Lighthouse for the Blind, Tyler, Texas

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania

Product/NSN: Dog Collar
M.R. 1975 (Small)

M.R. 1976 (Medium)

M.R. 1977 (Large)

Product/NSN: Dog Leash

M.R. 1978

NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina

Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Services

Service Type/Location: Administrative

Services—Human Resources,

Department of Interior—South, Office of Surface Mining, Washington, DC

NPA: ServiceSource, Inc., Alexandria, Virginia

Contract Activity: Department of Interior—South, Washington, DC

Service Type/Location: Custodial Service,

Building 4050, Fort Polk, Louisiana
NPA: Vernon Sheltered Workshop, Leesville, Louisiana

Contract Activity: Directorate of Contracting, Fort Polk, Louisiana

Service Type/Location: Telephone

Switchboard Operations, Department of Veterans Affairs, Erie VA Medical Center, Erie, Pennsylvania

NPA: Elizabeth Pierce Olmsted, M.D. Center for the Visually Impaired, Buffalo, New York

Contract Activity: Erie Veterans Affairs Medical Center, Erie, Pennsylvania

Deletions

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

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

2. The action will not have a severe economic impact on future contractors for the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products deleted from the Procurement List.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Clock, Atomic, Standard, Thermometer

6645-00-NIB-0076

NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Product/NSN: Clock, Wall, Battery

6645-01-467-8477

NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Product/NSN: Label, Pressure-Sensitive Adhesive
7530-00-577-4373
7530-00-577-4374
7530-00-577-4375

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Product/NSN: Sheath, Pen and Pencil
7510-00-052-2664

NPA: York County Blind Center, York, Pennsylvania

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Product/NSN: SPEAR Insulation Subsystem
8415-01-F01-0197 (Silk Weight Undershirt & Drawers—XX-Large/Regular)

8415-01-F01-0204 (Mid Weight Undershirt & Drawers—XX-Large/Regular)

8415-01-F01-0211 (Stretch Overall—XX-Large/Regular)

8415-01-F01-0218 (Fleece Jacket—XX-Large/Regular)

8415-01-F01-0219 (One Set of 4-Layer Clothing—Small/Regular)

8415-01-F01-0220 (One Set of 4-Layer Clothing—Medium/Regular)

8415-01-F01-0221 (One Set of 4-Layer Clothing—Large/Regular)

8415-01-F01-0222 (One Set of 4-Layer Clothing—Large/Long)

8415-01-F01-0223 (One Set of 4-Layer Clothing—X-Large/Regular)

8415-01-F01-0224 (One Set of 4-Layer Clothing—X-Large/Long)
8415-01-F01-0225 (One Set of 4-Layer Clothing—XX-Large/Regular)

NPA: Peckham Vocational Industries, Inc., Lansing, Michigan

Contract Activity: U.S. Army Soldier Systems Command, Natick, Massachusetts

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02-29771 Filed 11-21-02; 8:45 am]

BILLING CODE 6353-01-P

The Department also received a request to revoke two antidumping duty orders in part.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Extruded Rubber Thread from Malaysia and Certain Helical Spring Lock Washers from the People's Republic of China.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 2003.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

	Period to be reviewed
Antidumping Duty Proceedings	
Malaysia: Extruded Rubber Thread, A-557-805 Heveafil Sdn. Bhd.	10/1/01-9/30/02
The People's Republic of China: Helical Spring Lock Washers, ¹ A-570-822 Hang Zhou Spring Washer Plant (aka Zhejiang Wanxin Group Co., Ltd.)	10/1/01-9/30/02
The People's Republic of China: Barium Chloride, ² A-570-007 China National Chemicals Import and Export Corp. Zhang Jia Ba Salt Chemical Plant Tangshan Tianjin Chemical Industry Corporation Qingdao Red Star Chemical Group Linshu Sichuan Ermeishan Salt Chemical Industry Group Company, Ltd. Hengnan Tianjin Buohai Chemical United Import/Export Company Kunghan Hebei Xinji Chemical Plant	10/1/01-9/30/02
Countervailing Duty Proceedings	
Iran: Roasted In-Shell Pistachios, C-507-601 Tehran Negah Nima Trading Company, Inc.'s (dba Nima Trading Company)	1/1/01-12/31/01
Suspension Agreements	
None.	

¹ If one of the above-named companies does not qualify for a separate rate, all other exporters of helical spring lock washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

² If one of the above-named companies does not qualify for a separate rate, all other exporters of barium chloride from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 18, 2002.

Holly A. Kuga,

*Senior Office Director, Group II, Office 4,
Import Administration.*

[FR Doc. 02-29790 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-588-850, A-588-851)

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan: Notice of Rescission of Antidumping Duty Administrative Reviews

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

ACTION: Notice of Rescission of Antidumping Duty Administrative Reviews.

EFFECTIVE DATE: November 22, 2002.

SUMMARY: On July 24, 2002, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 48435) a notice announcing the initiation of administrative reviews of the antidumping duty orders on certain

large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan and certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Japan, covering the period June 1, 2001, through May 31, 2002. These reviews were requested by United States Steel Corporation, a U.S. producer of the domestic like product of the merchandise under review. We are now rescinding these reviews as a result of United States Steel Corporation's withdrawal of its requests for administrative reviews.

FOR FURTHER INFORMATION CONTACT:

Constance Handley or Carol Henninger, at (202) 482-0631 or (202) 482-3003, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 2002).

Case History

On June 5, 2002, the Department published a notice of opportunity to request administrative reviews of the antidumping duty orders on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan and certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Japan (67 FR 38640). On June 28, 2002, United States Steel Corporation in accordance with 19 CFR 351.213(b), requested administrative reviews of these orders for Sumitomo Metal Industries, Ltd., NKK Tubes, and Kawasaki Steel Corporation. On July 24, 2002, in accordance with 19 CFR 351.221(c)(1)(i), we initiated administrative reviews of these orders for the period June 1, 2001 through May 31, 2002 (67 FR 48435). On October 22, 2002, United States Steel Corporation withdrew its requests for these reviews.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its

request for review within 90 days of the date of publication of the notice of initiation of the requested review. The Department may extend the time limit for withdrawing the request if it determines that it is reasonable to do so. United States Steel Corporation was the only party to request these reviews, and it has withdrawn its requests within the 90-day period. Accordingly, we are rescinding these reviews. The Department will issue appropriate assessment instructions to the U.S. Customs Service within 15 days of publication of this notice.

This notice is issued and published in accordance with section 751 of the Act (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: November 15, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02-29791 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-806]

Silicon Metal From the People's Republic of China (PRC): Postponement of Time Limit for Preliminary Results of New Shipper Antidumping Review in Conjunction with Administrative Review

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

SUMMARY: On October 2, 2002, the Department of Commerce (the Department) received a request from China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp. (Lin Fen) for an expansion of the normal period of review (POR) of the new shipper review. In the same letter, Lin Fen agreed to waive the time limits of section 351.214(i) of the Department's regulations so that the Department may conduct the new shipper review concurrently with the administrative review of silicon metal from the PRC for the period June 1, 2001, through May 31, 2002 (67 FR 48435). Therefore, pursuant to Lin Fen's request and in accordance with the Department's regulations, we will expand the normal POR of the new shipper review by 45 days, from June 1, 2001 through November 30, 2001 to June 1, 2001 through January 14, 2002, and conduct this new shipper review concurrently with the administrative review.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Christian Hughes or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-0190 and (202) 482-3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On December 31, 2001, the Department received a timely request from Lin Fen to conduct a new shipper review of the antidumping duty order on silicon metal from the PRC. On January 31, 2002 (67 FR 5966), the Department initiated the new shipper antidumping review covering the period June 1, 2001, through November 30, 2001. On June 28, 2002, the Department received a timely request from Lin Fen to conduct an administrative review of this antidumping duty order. On July 24, 2002, the Department initiated the administrative antidumping review covering the period June 1, 2001, through May 31, 2002 (67 FR 48435).

Postponement of New Shipper Review

On October 2, 2002, Lin Fen, in accordance with section 351.214(j)(3), agreed to waive the applicable time limits for the new shipper review so that the Department might conduct the new shipper review concurrently with the June 1, 2001 through May 31, 2002 administrative review of silicon metal from the PRC, and also requested an expansion of the new shipper review POR in order to include both sales to an unaffiliated customer and entries of subject merchandise into the United States. The Department has the discretion to expand the POR in order to cover entries of the subject merchandise. See section 351.214(f)(2)(ii) of the Department's regulations, and the preamble to the Department's regulations, which specifically discusses the Department's ability to expand the POR by 30 days or more, at 66 FR 27319-27320 (May 19, 1997). Therefore, we have decided to expand the new shipper POR by 45 days until January 14, 2002 in order to capture both sales to an unaffiliated customer and entries of subject

merchandise into the United States. Pursuant to Lin Fen's request, and in accordance with section 351.214(j)(3) the Department's regulations, we will conduct this new shipper review concurrently with the June 1, 2001 through May 31, 2002 administrative review of silicon metal from the PRC. Therefore, the preliminary results of the antidumping new shipper review, as well as the administrative review, will be due 245 days from the last day of the administrative review period, *i.e.*, March 2, 2003. See section 351.213(h) of the Department's regulations. Because this date falls on a weekend, we will issue the preliminary results of both reviews on the next business day, March 3, 2003.

This notice is published in accordance with section 751(a)(2)(B) of the Act and section 351.214(j)(3) of the Department's regulations.

Dated: November 15, 2002.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02-29788 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-815]

Sulfanilic Acid From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: November 22, 2002.

SUMMARY: On May 10, 2002, the Department of Commerce (the Department) published the preliminary results of the antidumping administrative review of sulfanilic acid from the People's Republic of China. See *Notice of Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review of Sulfanilic Acid from the People's Republic of China*, 67 FR 31770 (May 10, 2002) (*Preliminary Results*).

Based on our analysis of comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for Zhenxing Chemical Industry Company (Zhenxing) (also known as Baoding Mancheng Zhenxing Chemical Plant) is listed below in the

section entitled "Final Results of Review."

We are rescinding the review with respect to Xinyu Chemical Plant (Xinyu) (formerly known as Yude Chemical Industry Company) as explained below in the "Final Rescission" section of this notice because Xinyu did not export the subject merchandise to the United States during the period of review (POR).

FOR FURTHER INFORMATION CONTACT: Sean Carey or Holly Hawkins, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230 at (202) 482-3964 or (202) 482-0414, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

All citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2002).

Background

Since the *Preliminary Results*, the following events have occurred. Petitioner, Nation Ford Chemical Company (NFC), timely submitted publicly available information regarding the valuation of factors of production on May 30, 2002, in accordance with section 351.301(c)(3)(ii) of the Department's regulations. In accordance with section 351.301(c)(1), respondents submitted timely factual information on June 10, 2002 in response to the factual information submitted by petitioner on May 30, 2002.

On June 10, 2002, petitioner and respondents submitted case briefs, and respondents made a timely request for a public hearing. Petitioner and respondents submitted rebuttal briefs on June 19, 2002 after the Department granted an extension for the filing of rebuttal briefs in response to a request from respondents. On August 29, 2002, we extended the deadline for the final results of this review. See *Extension of Time Limit for Final Results of Antidumping Duty Administrative Review; Sulfanilic Acid from the People's Republic of China*, 67 FR 57220 (September 9, 2002). Respondents withdrew their request for a public hearing on October 8, 2002.

Final Rescission

In the *Preliminary Results*, the Department noted that a query of U.S. Customs Service data on entries of sulfanilic acid from the People's

Republic of China made during the POR confirmed that Xinyu made no entries during the POR. Although in a prior decision we had found that Xinyu and Zhenxing should be treated as a single entity (see *Notice of Amendment of Final Results of Antidumping Duty Administrative Review; Sulfanilic Acid from the People's Republic of China*, 65 FR 18300, April 7, 2000), our analysis in this review has revealed no evidence that Xinyu and Zhenxing should be treated as a single entity. No new information has been presented since the *Preliminary Results* to warrant reconsideration of our determination to rescind. Therefore, we are rescinding the review with respect to Xinyu.

Scope of the Antidumping Duty Order

Imports covered by this antidumping duty order are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of the Comments Received

All issues raised in the briefs filed by parties to this administrative review are

addressed in the *Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration: Issues and Decision Memorandum for the Final Results of the Administrative Review of Sulfanilic Acid from the People's Republic of China*, dated November 15, 2002 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the internet at <http://ia.ita.doc.gov>. The paper copy and electronic version of the *Decision Memo* are identical in content.

Separate Rates

In the *Preliminary Results*, we found that Zhenxing met the requirements for receiving a separate rate. No new information or evidence of changed circumstances has been presented since then to warrant reconsideration of this finding. Accordingly, Zhenxing has been assigned a separate rate, the rate listed below under the section "Final Results of Review," for purposes of these final results.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. A complete discussion of the changes made to these calculations can be found in the "Memorandum to the File from Sean Carey, Trade Analyst, through Dana Mermelstein, Program Manager, AD/CVD Enforcement, Office 7: Analysis for the Final Results of the 2000/2001 Administrative Review of Sulfanilic Acid from the People's Republic of China," dated November 15, 2002.

Final Results of Review

We determine the weighted-average dumping margin for Zhenxing for the period August 1, 2000 through July 31, 2001 to be 64.22 percent.

Assessment Rates

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Since the reported sales are CEP sales through a single affiliated importer, we will direct Customs to

assess the rate that was calculated using the aggregate value of the calculated antidumping duties divided by the aggregate entered customs value of the subject merchandise from Zhenxing during the POR.

Cash Deposit Requirements

The deposit requirement, at the rate noted above under "Final Results of Review," will be effective for all shipments of subject merchandise by Zhenxing entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(2)(C) of the Act.

For all other companies, the following rates are in effect and remain unaffected by the results of this administrative review: (1) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (2) for all other PRC exporters, the rate will be the current PRC-wide *ad valorem* rate, which is 85.20 percent; and (3) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

Notification to Parties

This notice serves as a final reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

This administrative review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: November 15, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Issues

1. Use of New Surrogate Value Information for Aniline and Sulfuric Acid
2. Supplementing or Adjusting New Surrogate Value Information for Aniline and Sulfuric Acid

[FR Doc. 02-29789 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02-044. Applicant: Dartmouth College, 6015 McNutt, Room 104, Hanover, NH 03755. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL Ltd., Japan.

Intended Use: The instrument is intended to be used to study the basic principles of chromosome movement during cell division. Cells are grown in culture and at precise times during the cell cycle they are chemically fixed and embedded in acrylic polymer plastic. The cells are then cut into very thin sections and used to examine very fine mechanistic aspects of chromosome attachment to the spindle, the structure responsible for chromosome movement. *Application accepted by Commissioner of Customs:* September 27, 2002.

Docket Number: 02-046. Applicant: Brandeis University, Rosenstiel

Research Center (MS-029), 415 South Street, Waltham, MA 02454-9114.

Instrument: Electron Microscope, Model Tecnai F30 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study biological assemblies of proteins and collect images of these complexes which are then analyzed by computer to determine three-dimensional structures. Electron scattering and image formation will also be studied. *Application accepted by Commissioner of Customs:* October 31, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02-29794 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

The Pennsylvania State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5 PM in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 02-042. Applicant: The Pennsylvania State University, University Park, PA 16802. *Instrument:* Plate Filler, Model QFill2. *Manufacturer:* Genetix Limited, United Kingdom. *Intended Use:* See notice at 67 FR 64097, October 17, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the previously imported instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02-29792 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

The Pennsylvania State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02-043. Applicant: The Pennsylvania State University, University Park, PA 16802. *Instrument:* Colony Picking/Arraying Robot, Model Q PixII. *Manufacturer:* Genetix Limited, United Kingdom. *Intended Use:* See notice at 67 FR 64097, October 17, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: a unique multi-tasking robotic system for both picking and spotting as well as arraying specific cell colonies with a rapid picking rate of 3500 colonies per hour and the very high throughput required for large scale gene sequencing projects. The National Institutes of Health advises in its memorandum of October 7, 2002 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02-29793 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 111402C]

Alaska Transient Killer Whales; Notice of Petition Availability

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

ACTION: Notice of availability; request for information.

SUMMARY: NMFS has received a petition to designate a group (called the AT1 group) of killer whales (*Orcinus orca*) as a depleted stock under the Marine Mammal Protection Act (MMPA). In accordance with the MMPA, NMFS is announcing receipt of the petition and its availability for public review and is soliciting comments on the petition.

DATES: Comments must be received by December 23, 2002.

ADDRESSES: A copy of the petition may be requested from and comments should be submitted to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via facsimile (fax) to (301) 713-0376, but will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle, Office of Protected Resources, Silver Spring, MD (301) 713-2322, ext. 105, or Mr. Michael Payne, Alaska Regional Office, Juneau, AK (907)586-7235.

SUPPLEMENTARY INFORMATION:**Electronic Access**

A copy of the petition and its attachments are available on the Internet at the following address:<http://www.fakr.noaa.gov/protectedresources/>.

The 2000 stock assessment report for Eastern North Pacific Transient Killer Whales is available on the Internet at the following address:http://www.nmfs.noaa.gov/prot_res/overview/mm.html.

Background

Section 3(1)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1362(1)(A)) defines the term, "depletion" or "depleted", to include any case in which "...the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals ..., determines that a species or population stock is below its optimum sustainable population." Section 3(9) of

the MMPA (16 U.S.C. 1362(9)) defines "optimum sustainable population [(OSP)]...with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (i.e., K) to its maximum net productivity level (MNPL). MNPL is the population abundance that results in the greatest net annual increment in population numbers resulting from additions to the population from reproduction, less losses due to natural mortality.

The MMPA provides for interested parties to submit a petition to designate a population stock of marine mammals as depleted. Section 115(a)(3) of the MMPA (16 U.S.C. 1383b(a)(3)) requires NMFS to publish a notice in the **Federal Register** that such a petition has been received and is available for public review. Within 60 days of receiving a petition, NMFS must publish a finding in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

If NMFS makes a positive 60-day finding, NMFS must promptly initiate a review of the status of the affected population stock of marine mammals. No later than 210 days after receipt of the petition, NMFS must publish a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Following a 60-day comment period on the proposed rule, NMFS must publish a final rule within 90 days of the close of the comment period on the proposed rule.

In its 2000 stock assessment report on the affected killer whales, NMFS recognized the AT1 group as a part of a population stock called Eastern North Pacific Transient Killer Whales, which includes transient killer whales in British Columbia, Southeastern Alaska, and the Gulf of Alaska in addition to the AT1 group (see Electronic Access to obtain a copy of this stock assessment report). The report states that the minimum number of whales in this stock is 346.

Petition on AT1 Killer Whales

On November 13, 2002, the National Wildlife Federation submitted a petition on behalf of itself and six other

organizations to NMFS to designate the AT1 group of killer whales as a depleted population stock under the MMPA. The petition describes the AT1 group as one of three populations of transient killer whales in the Eastern North Pacific Ocean, which lives exclusively in Prince William Sound and the Kenai Fjords, and provides information related to this group of killer whales as a separate stock under the MMPA.

The petition includes an abundance of 22 AT1 killer whales when observations began in 1984 and a current abundance of nine whales and suggests that the decline in numbers demonstrates that the stock is depleted. The petition states that the causes of the decline include the following:

- (1) The *Exxon Valdez* oil spill,
- (2) Chemical contaminants,
- (3) Increased vessel traffic, and
- (4) Reduction in available prey species.

In a comment dated July 18, 2002, on draft 2002 marine mammal stock assessment reports the petitioners stated that the AT1 group should be a separate stock. However, the Eastern North Pacific Transient Killer Whale report was not scheduled for revision in 2002 and had not been modified when the draft 2002 reports were made available for public review and comment.

In accordance with the MMPA, NMFS announces receipt of this petition, and its availability for public review (See **ADDRESSES** and Electronic Access). The petition includes two attachments. Attachment A is the comment that the petitioners submitted to NMFS on draft 2002 marine mammal stock assessment reports. Attachment B is an extract from a petition submitted by other organizations related to Southern Resident killer whales in Puget Sound, WA. NMFS also solicits comments and information related to the statements in the petition and additional background on the status of the AT1 group of killer whales.

Dated: November 18, 2002.

Donald R. Knowles

Director, Office of Protected Resources
National Marine Fisheries Service.
[FR Doc. 02-29776 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[I.D. 101602C]

Notice of Availability of a Draft Environmental Impact Statement for an Incidental Take Permit Application and Habitat Conservation Plan

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of application and availability for public comment.

SUMMARY: This document advises the public that J.L. Storedahl & Sons, Inc. (Storedahl), has submitted an application to the Fish and Wildlife Service and the National Marine Fisheries Service (together, the Services) for incidental take permits (permits) pursuant to the Endangered Species Act of 1973, as amended (Act). The permit application includes: (1) the proposed Habitat Conservation Plan (HCP); and, (2) the proposed Implementing Agreement. The Services also announce the availability of a draft Environmental Impact Statement (DEIS) for the permit application.

This notice is provided pursuant to section 10(a) of the Act, and National Environmental Policy Act regulations. The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments on the permit application, DEIS, HCP, and Implementing Agreement must be received from interested parties no later than January 21, 2003.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for addresses where hard-copies of the Plan and associated documents may be obtained or reviewed. Requests for documents on CD ROM should be made by calling the U.S. Fish and Wildlife Service at (360) 534-9330. The documents are also available electronically on the World Wide Web at <http://www.r1.fws.gov/>.

Comments and requests for information should be sent to Tim Romanski, Storedahl DEIS/HCP Comments, U.S. Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite

102, Lacey, Washington 98503-1263, telephone (360) 753-5823, facsimile (360) 753-9518. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, Project Manager, U.S. Fish and Wildlife Service, (360) 753-5823; or Laura Hamilton, Project Manager, National Marine Fisheries Service, (360) 753-5820.

SUPPLEMENTARY INFORMATION: Hard bound copies are available for viewing, or partial or complete duplication, at the following libraries: Woodland Community Library, 770 Park St, Woodland, WA (360) 225-2115; Battle Ground Community Library, 12 W Main St, Battle Ground, WA (360) 687-2322; Ridgefield Community Library, 210 N Main Ave, Ridgefield, WA (360) 887-8281; Vancouver Community Library, 1007 E Mill Plain Blvd, Vancouver, WA (360) 695-1566; and, Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA (360) 352-0595.

Background

As required by section 10(a)(2)(B) of the Act, Storedahl has also prepared an HCP designed to minimize and mitigate any such take of endangered or threatened species. The permit application is related to gravel mining and reclamation activities on approximately 300 acres of Storedahl-owned lands located in Clark County, Washington. The proposed permits would authorize the take of the following threatened species incidental to otherwise lawful activities: steelhead (*Oncorhynchus mykiss*), bull trout (*Salvelinus confluentus*), chum salmon (*Oncorhynchus keta*), and chinook salmon (*Oncorhynchus tshawytscha*). Storedahl is also seeking coverage for 5 currently unlisted species (including anadromous and resident fish) under specific provisions of the permits, should these species be listed in the future. Section 9 of the Endangered Species Act and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and

sheltering (50 CFR 17.3, 50 CFR 222.102).

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. U.S. Fish and Wildlife Service regulations governing permits for endangered species are promulgated in 50 CFR 17.22; and, regulations governing permits for threatened species are promulgated in 50 CFR 17.32. National Marine Fisheries Service regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Storedahl owns and operates a gravel processing plant in rural Clark County, Washington, near the East Fork Lewis River. This site is known as the Daybreak Mine. It is located approximately 4 miles (6.4 km) southeast of the town of LaCenter, and approximately 1 mile (1.6 km) downstream of Clark County's Daybreak Park. The 300-acre site is composed of two parcels. One parcel is approximately 80 acres and consists of 5 pits, which were mined intermittently, under different owners, from 1968 to 1995. No active extraction of gravel from this site is now occurring. Current operations are limited to processing and distributing sand and gravel that is mined off-site. Processing involves separating the sand from the gravel, and separating the gravel into different size classes. The second parcel is located immediately to the north and east of this previously mined area, on a low terrace above the 100-year floodplain. This 178-acre parcel contains high quality sand and gravel deposits that have not been mined. Current operations on this parcel include cattle grazing and hay and crop production.

Storedahl proposes to mine the sand and gravel deposits from 101 acres of this 178-acre parcel, and continue processing operations at the other parcel. These operations would continue until sand and gravel extraction at the 178-acre parcel is complete, projected to be 15 years or less. Concurrent with, and following sand and gravel extraction, Storedahl would implement a site reclamation plan.

The proposed mining, processing, and reclamation activities have the potential to affect fish and wildlife associated with the East Fork Lewis River ecosystem. The majority of the gravel to be mined is located just below the water table in a shallow aquifer, and the proposed gravel mining and reclamation plan would create a series of open water ponds and emergent wetlands. The created ponds and wetlands will drain

via a controlled outlet to a small creek (Dean Creek) and then to the East Fork Lewis River. The shallow aquifer is connected to the East Fork Lewis River. The proposed mining and reclamation plan has the potential to affect a suite of habitat conditions, including, but not limited to, water quality, channel morphology, riparian function, off-channel connections, and the conversion of pastureland to forest, wetland, and open water habitats. Some of these effects could involve species subject to protection under the Endangered Species Act.

Section 10 of the Act, as previously stated, contains provisions for the issuance of permits to non-Federal land owners for the take of endangered and threatened species. Any such take must be incidental to otherwise lawful activities, and must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. As required under the permit application process, Storedahl prepared and submitted to the Services for approval an HCP containing a strategy for minimizing and mitigating take associated with the proposed activities to the maximum extent practicable. Storedahl's HCP contains a funding strategy, which is also required under the permit application process.

Activities proposed for permit coverage include the following.

(1) Gravel mining and related activities in the terrace above the 100-year floodplain, with potential impacts on groundwater quality and quantity, potential impacts on surface water quality and quantity, potential influence on channel migration, and potential access to gravel ponds by anadromous salmonids.

(2) Gravel processing.

(3) Site reclamation activities including, but not limited to the creation of emergent and open water wetland habitat, riparian and valley-bottom forest restoration, habitat rehabilitation, riparian irrigation, low flow augmentation to Dean Creek, and construction of facilities (such as trails and parking lots) to support future incorporation of the site into the open space and greenbelt reserve.

(4) Monitoring and maintenance of conservation measures. The duration of the proposed permits and HCP is 25 years, though some aspects of the conservation measures associated with the proposed HCP would continue in perpetuity.

The Services formally initiated an environmental review of the project through publication of a notice of intent to prepare an environmental impact statement (EIS) in the **Federal Register**

on December 27, 1999 (64 FR 72318). That document also announced a 30-day public scoping period during which interested parties were invited to provide written comments expressing their issues or concerns relating to the proposal. Following this announcement and public scoping, the DEIS was prepared.

The DEIS compares Storedahl's proposal against two no-action scenarios. Differences between the no-action scenarios and the proposed action are considered to be the effects that would occur if the proposed action were implemented. One additional alternative to Storedahl's proposal and the two no-action scenarios is also analyzed. These analyses, consisting of the comparisons and the expected effects, are contained in the DEIS.

Alternatives considered in the analysis include the following.

(1) Alternative A-1: Partition the property into 20-acre parcels and sell as rural residential/agricultural tracts - No Action.

(2) Alternative A-2: Mine the property without permits and avoid take - No Action.

(3) Alternative B: Mine and undertake habitat enhancement and reclamation activity at the Daybreak property implementing the May 2001 public review draft HCP - Preferred Alternative.

(4) Alternative C: Mine and undertake habitat enhancement and reclamation activity at the Daybreak property following a design and conservation measures presented to the Services in July, 2000.

One alternative was considered during scoping but not analyzed in detail. That alternative is essentially a combination of the two no-action scenarios listed above, Alternatives A-1 and A-2. That alternative would have involved mining on the portion of the property currently zoned for mining, with subsequent partitioning and sale of the mined and unmined property for low-density rural residential development. This was dismissed from detailed analysis because the vast majority of marketable sand and gravel on the portion of the property currently zoned for mining has already been extracted, rendering the alternative not feasible.

This notice is provided pursuant to section 10(a) of the Act, and National Environmental Policy Act regulations. The Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act and National Environmental Policy Act. If it

is determined that the requirements are met, permits will be issued for the incidental take of listed species. The final permit decisions will be made no sooner than 30 days after the publication of the Final EIS.

Dated: October 28, 2002.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon

Dated: November 19, 2002.

Margaret Lorenz,

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

[FR Doc. 02-29778 Filed 11-21-02; 8:45 am]

BILLING CODES 3510-22-S, 4310-55-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021108269]

RIN 0648-ZB33

Joint Program Announcement on Climate Variability and Human Health for FY 2003; National Oceanic and Atmospheric Administration (NOAA), in Collaboration With; National Science Foundation (NSF), Environmental Protection Agency (EPA), and EPRI (formerly the Electric Power Research Institute)

AGENCY: Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: Due to an unavoidable administrative error, the wrong version of this notice was published on November 14, 2002, at 67 FR 69110. With the intent of stimulating integrated multidisciplinary studies and enhancing institutional collaboration, National Oceanic Atmospheric Administration (NOAA), Environmental Protection Agency (EPA), the National Science Foundation (NSF), and the Electric Power Research Institute (EPRI), announce our interest in receiving research proposals to improve our understanding of the human health consequences related to climate variability and enhance the integration of useful climate information into public health policy and decision-making. This joint announcement is intended to support the formation of multidisciplinary teams working in close collaboration on integrated projects to illuminate the human, biological, and physical pathways by which climate may affect human health,

and which explore the potential for applying climate and environmental information toward the goal of improved public health. We are also interested in understanding how the human health impacts and responses related to climate variability affect our knowledge of potential consequences of, and adaptation and vulnerability to, longer term changes in the climate system.

Investigators should also plan to participate in an annual meeting of researchers funded under this announcement. This meeting will be organized by the funding partners and is intended to facilitate midpoint discussions of research and methodology as well as presentations of final research results. The participation of other team members, particularly new researchers at the graduate and postdoctoral level, is highly encouraged.

DATES: Unless otherwise noted, strict deadlines by which NOAA OGP must receive proposals for submission to the FY 2003 process are: Pre-proposals must be received by OGP no later than December 16, 2002, and full proposals must be received no later than February 18, 2003; Applicants who have not received a response to their pre-proposal within four weeks should contact the program manager: Juli Trtanj (301) 427-2089, ext. 134 or Internet: juli.trtanj@noaa.gov. The time from target date to grant award varies. We anticipate that review of full proposals will occur in April 2003, for most approved projects. August 1, 2003, may be used as the earliest proposed start date on the proposal, unless otherwise directed by the Program Manager. Applicants should be notified of their status within six months of full proposal submission. All proposals must be submitted in accordance with the requirements listed below. Failure to heed the requirements may result in proposals being returned without review.

ADDRESSES: All submissions should be directed to: Office of Global Programs (OGP); National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910-5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address or phone (301) 427-2089, ext. 107, fax: (301) 427-2222, Internet: irma.dupree@noaa.gov.

SUPPLEMENTARY INFORMATION:

1. Funding Availability

NOAA, NSF, EPA, and EPRI believe that research on the relationship between climate variability and human health will benefit significantly from a

strong partnership with outside investigators. An estimated \$1.3 Million may be available for FY03. Current plans assume that over 50% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. Funding may be provided by NOAA, NSF, EPA, or EPRI. Projects may be conducted for up to a three year period.

2. Eligibility

Participation in this competition is open to all institutions eligible to receive support for NOAA, NSF, EPA, and EPRI. For awards to be issued by NOAA, eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an intragovernment funds transfer. Proposals selected for funding from a non-NOAA Federal Agency will be funded through an interagency transfer. Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

3. Program Authority

NOAA Authority: U.S.C. 2931 et seq.; (CFDA No. 11.431)—Climate and Atmospheric Research.

NSF Authority: 42 U.S.C. 1861-75; (CFDA No. 47.050)—Geosciences.

EPA Authority: 42 U.S.C. 7403(a); 42 U.S.C. 7403(b); 42 U.S.C.; 7403(g); 15 U.S.C. 2907(a); (CFDA No. 66.500)—Office of Research and Development.

4. Relevance of This Joint Announcement

Published in 2001, the U.S. National Research Council (NRC) report "Under the Weather: Climate, Ecosystems and Infectious Disease" highlights the need for strengthening research on the linkages between climate and infectious disease and recommends highly interdisciplinary collaboration

involving modelers, meteorologists, climatologists, ecologists, social scientists, and a wide array of medical and public health professionals. The report recognizes that the effectiveness of disease early warning systems will depend upon the context in which they are used, and recommends that the development of such systems should involve the active participation of the system's end users. Also, the U.S. National Assessment of the Potential Consequences of Climate Variability and Change, Health Sector Report, published in 2000, calls for a greater scientific understanding of the causal relationships between climate and human health, and the need to take an interdisciplinary approach that actively involves decision-makers and practitioners.

Several multi-agency sponsored workshops such as the American Academy of Microbiology Colloquium on Climate Variability and Human Health: An Interdisciplinary Perspective, and the workshop on Climate Change and Vector-borne and other Infectious Disease: A Research Agenda, called for cross-agency collaboration in supporting integrated research in this emerging discipline. The 1999 NRC report, Global Environmental Change: Research Pathways for the Next Decade, recognizes that climate may have important impacts on human health but that further study is necessary, and that such studies must also address issues of social vulnerability and adaptability.

It is well recognized that although early research has demonstrated a connection between climate and health in some cases, more rigorous and interdisciplinary research is required. This, coupled with an evolving capacity to understand and predict natural changes in the climate system, and a desire to develop and provide climate and environmental information for social benefit, particularly in the public health sector, has driven demand for improved understanding of the relationship between climate variability and human health. Both the scientific research results and recommendations stemming from various reports and meetings highlight the complexity of the research questions and the need for a coordinated multi-agency and interdisciplinary approach. The very nature of the research required cuts across disciplinary boundaries, and spans a range of agency missions and mandates and private sector interests. The NOAA Office of Global Programs is interested in the effective use of climate information in climate-sensitive sectors. The NSF focuses on broadly based

fundamental research to improve understanding of the Earth system. EPA is concerned with the impacts of climate change and variability on human health, and EPRI addresses key research gaps in climate change and human health. This announcement is offered as an experimental mechanism to fill critical gaps in climate variability and human health research and to coordinate funding of overlapping agency and institutional interests in such research. Other private sector organizations interested in jointly funding research through this announcement process should contact the NOAA Program Manager, Juli Trtanj (301) 427-2089, ext. 134, or Internet: juli.trtanj@noaa.gov. Research projects will be funded for a one, two or three year period.

5. Program Objectives

The over-arching goal of this announcement is to develop and demonstrate the feasibility of new approaches or field studies that investigate or validate well-formed hypotheses or models of climate variability and health interactions. This announcement is offered as part of an interagency effort to build an integrated climate and health community. Proposed research submitted under this announcement is encouraged to build on existing research activities, programs, research sites and facilities, or data sets.

6. Proposal Requirements and General Guidance

Research teams should include, at a minimum, one investigator each from the public health or medical response, ecology, and climate communities working in close collaboration on an integrated project. Research proposals submitted under this announcement are strongly encouraged to include components addressing either the adaptation or vulnerability of human and public health systems to climate variability, or an economic analysis of using climate information, or both. (See Criteria for Evaluation b). The funding partners will look favorably on research activities that involve end-users from the public health arena (*i.e.*, local public health officials, regional or international health organizations, other public health or disaster management agencies and institutions) and which address the means by which public health policy and decision-makers can use their research results. (See Criteria for Evaluation d). Investigators are encouraged to demonstrate that they will disseminate research results through formal presentation during at

least one professional meeting and publication in a peer-reviewed journal.

This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, NSF, EPA, and EPRI. The funding instrument for extramural awards will be a grant unless it is anticipated that any of the funding entities will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between a funding entity or funding entity scientist, and a recipient scientist or technician and/or contemplation by NOAA, NSF, or EPA of detailing Federal personnel to work on proposed projects. NOAA, NSF, and EPA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. This program does not require matching share.

Guidelines for Submission

1. Pre-Proposals

(a) Pre-proposals should include the names and institutions of all investigators, a statement of the problem, description of data and methodology including names of data sets and types of models or analysis, a general budget for the project, a description of intended use of results for public health policy and decision making, and brief biographical sketches for each investigator. Pre-proposals can be submitted electronically to Irma duPree at irma.dupree@noaa.gov, unless other arrangements have been made with the Program Manager. Pre-proposals must be no longer than eight pages in length and must be prepared using an 11 point font or larger, with one-inch margins. Pre-proposals longer than eight pages, with smaller fonts, or with attachments will not be accepted.

(b) The Program Officers will evaluate the pre-proposals.

(c) Submission of pre-proposals is not a requirement, but it is in the best interest of the applicants and their institutions.

(d) Email submissions are acceptable for pre-proposals only.

(e) Projects deemed unsuitable during pre-proposals review will not be encouraged to submit full proposals.

(f) Investigators who are not encouraged to submit full proposals will not be precluded from submitting full proposals.

2. Criteria for Evaluation

Below are the criteria for evaluation that will be used for making award

decisions. Pre-proposals will be evaluated using these criteria.

(a) Scientific Merit—60% (to include: Methodology, proof of data quality and availability, experience of team and team members, and relevant peer-reviewed publications).

(b) Responsiveness to announcement—20%.

(c) Explicit multidisciplinary participation and collaboration—10%.

(d) Potential for use by climate, ecology and health community or public/environmental health community—10%.

3. Selection Procedures and Review Process

Applications will be screened to determine if applicants are eligible and proposals are complete. The proposals will undergo independent peer panel review and may receive independent peer mail review. The independent peer mail reviewers rate each proposal according to the above Criteria for Evaluation. Each independent peer panel review member will rate the proposals using the above-mentioned criteria and taking the mail reviews into consideration. No consensus advice will be given. Both agency and non-agency experts in the field may be used in this process. Program Officers, comprised of representatives both Federal and non-Federal funding institutions, will evaluate the proposal. None of the Program Officers are voting members of an independent peer panel. The non-Federal Program Officers will provide their recommendations to the Federal Program Officers. The Federal Agency Program Officers will then make funding selections taking into account these recommendations, the independent peer panel review and evaluations, and program policy factors listed below.

Proposals are usually awarded in the numerical order in which they are ranked. However, the Program Officers may consider the following program policy factors: (a) Whether proposals do not substantially duplicate other projects that are currently funded by NOAA, NSF, EPA, other Federal agencies or other funding sources; (b) whether proposals do not substantially duplicate other proposals submitted in response to this announcement; (c) whether proposals funded maximize use of available funds; (d) whether proposals provide programmatic balance and (e) whether proposal cost falls within remaining funds available. As a result of this review, either the non-Federal or Federal Program Officers may decide to select an award out of order. The Federal Program Officers will

also determine the total duration and amount of funding for each selected proposal. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding. Federal agency employees are subject to statutes pertaining to non-disclosure and confidentiality requirements protecting proprietary information that may be contained in applications submitted for potential funding. Non-Federal evaluators have agreed in writing to similar non-disclosure and confidentiality provisions. Please note, however, that should EPRI or another participating private organization which jointly funds research under this notice select an application for funding, none of the participating Federal agencies is responsible for any unauthorized disclosure of information that may occur or any dispute that may arise.

4. Proposal Submission

The following forms are required in each application, with original signatures on each federal form. Failure to comply with these provisions will result in proposals being returned without review.

(a) Full Proposals: (1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are required to submit 3 copies of the proposal; however, the normal review process requires 20 copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. (3) Proposals must be limited to 40 pages (numbered), 11 point font or larger and 1 inch margins, including abstract, results of prior research, statement of work, budget justification, budget, investigators' vitae, and all appendices. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) Required Elements: All proposals must include the following elements:

(1) Signed title page: The title page must be signed by the Principal Investigator (PI) and the institutional representative. If more than one investigator is listed on the title page,

please identify the lead investigator. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The amount of Federal funds being requested should be listed for each budget period and for the total project.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period.

(3) Results from prior research: The results of related research activities should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency or institution, award number, PIs, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, and relevance to the announcement. Benefits of the proposed project to the general public and the scientific community should also be discussed. A summary of proposed work must be included clearly indicating that the proposed work is achievable. The statement of work, including references but excluding figures and other visual materials must not exceed 15 pages to text.

(5) Budget Justification: A brief description of the expenses listed on the budget and how they address the proposed work. Itemized justification must include salaries, equipment, publications, supplies, tuition, travel, etc.

(6) Budget: the proposal must include total and annual budget corresponding with the descriptions provided in the statement of work. A sample budget sheet can be found in the statement of work. A sample budget sheet can be found in the standard NOAA application kit—Federal Applicants must submit a Standard Form 424 (4–92) "Application for Federal Assistance", including a detailed budget using the Standard Form 424a (4–92). "Budget Information—Non-Construction Program". The form is included in the standard NOAA application Kit. Additional text to justify expenses should be included as necessary. Federal researchers should contact Irma duPree at (301) 427–2089 ext. 107, for guidance regarding the types of forms

required for submission. Additionally, Federal researchers should provide, with their application, the appropriate statutory authority that allows their agency to receive funds from another Federal agency to complete the work outlined in their proposal.

(7) *Vitae*: Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to 10–15 of the most recent and relevant publications with up to five other relevant papers.

(8) Current and pending support: for each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(9) List of suggested reviewers: The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposals. Such lists may be considered at the discretion of the Program Officers.

Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreement contained in the Federal Register notice of October 1, 2001 (66 FR 49917), as amended by the Federal Register Notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Classification

It has been determined that this notice is not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for notices relating to public property, loans, grants, benefits or contracts. Because notice and comment are not required, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA).

The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a

collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 02-29765 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-KA-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111902B]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (MAFMC) and its Ecosystems Committee, its Executive Committee, and its Demersal Species Committee meeting as a Council Committee of the Whole with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Board, will hold a public meeting.

DATES: The meetings will be convened Tuesday, December 10, 2002, to Thursday, December 12, 2002.

On Tuesday, December 10, 2002, the Ecosystems Committee will meet from 12:30 to 3:30 p.m. Council will meet from 3:30 to 5 p.m.

On Wednesday, December 11, 2002, the Council will meet jointly with the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board from 8:30 a.m. to 5 p.m.

On Thursday, December 12, 2002, the Executive Committee will meet from 8 to 9 a.m. Council will meet from 9 a.m. until 1 p.m.

ADDRESSES: This meeting will be held at the Sanderling Inn Resort & Conference Center, 1461 Duck Road, Duck, NC, telephone 252-261-4111.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302-674-2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda items for the committees and Council meetings are: begin reviewing NMFS

bycatch efforts and impacts to MAFMC fishery management plans, committee update on national workshop on fishing gear impacts to essential fish habitat, discuss ASMFC workshop on multispecies assessment; monkfish Stock Assessment and Fishery Evaluation Report 2001 and final action on Framework 2 to modify reference points and set trip limits/days at sea for 2003; summer flounder, scup, and black sea bass recreational management measures review and discuss Monitoring Committees' recommendations, review and discuss Advisory Panels' recommendations, and develop and approve recreational management measures for 2003; discuss and possibly identify summer flounder, scup, and black sea bass plan development priorities for 2003; review Council 2003 calendar, budget, and annual work plan; approve action to extend Illex limited access moratorium for one year, i.e., through June 30, 2004; receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting.

Although non-emergency issues not contained in this agenda may come before the Council and ASMFC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

Dated: November 19, 2002.

Richard W. Surdi,

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

[FR Doc. 02-29777 Filed 11-21-02; 8:45 am]

BILLING CODE 3510-22-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act (AGOA)

November 18, 2002.

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

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric made in Lesotho and handmade articles made from such handloomed fabric that are made in Lesotho qualify for preferential treatment under Section 112(a) of the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Lesotho with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, handloomed, or folklore articles.

Under Section 2 of Executive Order 13191 of January 17, 2001, CITA is authorized to "consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles" (66 FR 7272). Consultations with Lesotho were held on October 30, 2002, and CITA has now determined that handloomed fabrics produced in and exported from Lesotho and handmade articles produced in and exported from Lesotho made from such handloomed fabrics are

eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs to allow entry of such products of Lesotho under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in grouping "9".

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 2002.

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

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13101 of January 17, 2001, has determined that, effective on November 25, 2002 handloomed fabric produced in Lesotho and handmade articles produced in Lesotho from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Lesotho for Grouping "9" is a certification by the Government of Lesotho that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 02-29750 Filed 11-21-02; 8:45 am]
BILLING CODE 3510-DR-S

DEPARTMENT OF DEFENSE

[OMB Control Number 0704-0321]

**Information Collection Requirement;
Defense Federal Acquisition
Regulation Supplement; Contract
Financing**

AGENCY: Department of Defense (DoD).
ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on its provisions. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through May 31, 2003, under OMB Control Number 0704-0321. DoD proposes that OMB extend its approval for use through May 31, 2006.

DATES: DoD will consider all comments received by January 21, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite OMB Control Number 0704-0321 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite OMB Control Number 0704-0321.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, at (703) 602-0296. The information collection requirements addressed in this notice are available electronically on the World Wide Web at <http://www.acq.osd.mil/dp/dars/dfars.html>. Paper copies are available from Mr. Euclides Barrera, OUSD(A&T)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Contract Financing, Progress Payments for Foreign Military Sales Acquisitions—Defense Federal Acquisition Regulation Supplement (DFARS) Part 232 and the clause at 252.232-7002; OMB Control Number 0704-0321.

Needs and Uses: Section 22 of the Arms Export Control Act (22 U.S.C. 2762) requires the U.S. Government to use foreign funds, rather than U.S. appropriated funds, to purchase military

equipment for foreign governments. To comply with this requirement, the Government needs to know how much to charge each country. The clause at 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions, requires each contractor whose contract includes foreign military sales (FMS) requirements to submit a separate progress payment request for each progress payment rate, and to submit a supporting schedule that clearly distinguishes the contract's FMS requirements from U.S. requirements. The Government uses this information to determine how much of each country's funds to disburse to the contractor.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 5,508 (includes 1,836 response hours plus 3,672 recordkeeping hours).

Number of Respondents: 306.

Responses Per Respondents: 12.

Annual Responses: 3,672.

Average Burden Per Response: .5 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements relating to DFARS Part 232, Contract Financing, and the related clause at DFARS 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions.

a. DFARS 232.502-4-70(a) prescribes use of the clause at DFARS 252.232-7002 in any contract that provides for progress payments and contains FMS requirements.

b. DFARS 252.232-7002 requires each contractor whose contract includes FMS requirements to submit a separate progress payment request for each progress payment rate, and to submit a supporting schedule that distinguishes the contract's FMS requirements from U.S. requirements.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02-29467 Filed 11-21-02; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE**Department of the Air Force****Acceptance of Group Application Under Public Law 95-202 and Department of Defense Directive (DODD) 1000.20 "U.S. Civilian Crewmembers of the Flotilla Alaska Barge and Transport Company, Who Worked on the Inland and Coastal Waters of Vietnam as a Result of Contract MST-OT-35 (X) With the U.S. Navy for Direct Support of Military Operations in Vietnam From April 1966 Through April 1975."**

Under the provisions of section 401, Public Law 95-202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of a group known as: "U.S. Civilian Crewmembers of the Flotilla Alaska Barge and Transport Company, Who Worked on the Inland and Coastal Waters of Vietnam as a Result of Contract MST-OT-35 (X) With the U.S. Navy for Direct Support of Military Operations in Vietnam from April 1966 through April 1975." Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE-Wing, 3rd Floor, Andrews AFB, MD 20762-7002. Copies of documents or other materials submitted cannot be returned.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02-29729 Filed 11-21-02; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE**Department of the Army****Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting**

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the inaugural meeting of the Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors (BoV). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463). This board was chartered on February 1,

2002, in compliance with the requirements set forth in 10 U.S.C. 2166.

Date: December 12, 2002.

Time: 9 a.m. to 5 p.m.

Location: Pratt Hall, Building 35, 7011 Morrison Ave., Fort Benning, GA 31905.

Proposed Agenda: The WHINSEC BoV will approve its by-laws, establish its 2003 schedule and receive sub-committee and liaison reports of specific WHINSEC operations, activities and curriculum for compliance with the authorizing legislation—specifically the curriculum and the human rights mandatory training programs—in preparation of its annual report.

FOR FURTHER INFORMATION CONTACT: Ken LaPlante, Core Processes, Inc, Army G-3 (Room 2D337), 400 Army Pentagon, Washington, DC 20310, telephone (703) 692-7419 or LTC Andres Toro at (703) 692-7421.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. There will be time, specified, for public comments by individuals and organizations at the end of the meeting on December 12, 2002. Public comment and presentations will be limited to two minutes each and must be provided in writing and received before Wednesday, December 4, 2002. Mail written presentations and requests to register to attend the public sessions to: LTC Andres Toro, DAM-SSR (Rm 2D337), 400 Army Pentagon, Washington, DC 20310-0400. Public seating is limited, and is available on a first come, first served basis.

Dated: November 8, 2002.

John C. Speedy III,

SES, Designated Federal Officer, WHINSEC BoV.

[FR Doc. 02-29586 Filed 11-21-02; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION**Submission for OMB Review; Comment Request**

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 December 23, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, 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 *Karen_F.Lee@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 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: November 18, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Tech-Prep Demonstration Grants.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary), Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 2400.

Abstract: Section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Pub. L. 105-332) authorizes grants to consortia to carry out tech-prep education programs that involve the location of a secondary school on the campus of a community college. This collection solicits

applications for grant funding from eligible applicants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890-0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

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. 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 Sheila Carey at her e-mail address Sheila.Carey@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. 02-29713 Filed 11-21-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Secretary of Education's Commission on Opportunity in Athletics; Meeting

AGENCY: Secretary of Education's Commission on Opportunity in Athletics; Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the Secretary of Education's Commission on Opportunity in Athletics (the Commission). The Commission invites comments from the public regarding the application of current Federal standards for ensuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX of the Education Amendments of 1972 ("Title IX"). The meeting will take place in Philadelphia, Pennsylvania.

Individuals who will need accommodations for a disability in order to attend the meetings should notify the Commission office no later than November 27, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: December 4, 2002.

Location: Philadelphia Marriott. 1201 Market Street, Philadelphia, PA.

Times: December 4: 9 a.m.-12:30 p.m., 2 p.m.-5 p.m.

Meeting Format: This meeting will be held according to the following schedule:

1. Date: December 4, 2002, Time: 9 a.m. to 12:30 p.m., 2 p.m.-5 p.m.

Attendees: If you would like to attend any or all of the above listed meetings, we ask that you register with the Commission office by email or fax to the address listed under **ADDRESSES**. Please provide us with your name and contact information.

Participants: The meeting scheduled for December 4, 2002 will consist of review and discussion by the Commissioners of the information from the previous public meetings in preparation for the Commission's forthcoming report to the Secretary of Education. The public is invited to observe this meeting; however there will not be opportunity for public comment.

Written comments will be accepted at each meeting site or may be mailed to the Commission at the address listed under **ADDRESSES**.

In addition to making reservations, individuals attending the public meetings, for security purposes, must be prepared to show photo identification in order to enter the meeting location.

Request for Written Comments: We invite the public to submit written comments relevant to the Commission.

DATES: We would like to receive your written comments on the Act by November 29, 2002.

ADDRESSES: Submit all comments to the Commission using one of the following methods:

1. *Internet.* We encourage you to send your comments through the Internet to the following address:

OpportunityinAthletics@ed.gov.

2. *Mail.* You may submit your comments to The Secretary of Education's Commission on Opportunity in Athletics, 400 Maryland Avenue, SW., ROB-3 Room 3060, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

3. *Facsimile.* You may submit comments by facsimile at (202) 260-4560.

FOR FURTHER INFORMATION CONTACT: See the Commission address under the **ADDRESSES** section of this notice. View the Commission's web site at: <http://www.ed.gov/inits/commissionsboards/athletics>.

www.ed.gov/inits/commissionsboards/athletics. The Commission office number is 202-708-7417.

SUPPLEMENTARY INFORMATION: The nation is commemorating the 30th anniversary of the passage of Title IX, the landmark legislation prohibiting recipients of Federal funds from discriminating on the basis of sex. Since this legislation was enacted, there has been a dramatic increase in the number of women participating in athletics at the high school and college levels. The Secretary of Education has determined that this anniversary provides an appropriate time to review the application of Title IX to educational institutions' efforts to provide equal opportunity in athletics to women and men. In order to do so, the Secretary established the Commission on Opportunity in Athletics. The Commission will produce a report no later than January 31, 2002, outlining its findings relative to the opportunities for men and women in athletics in order to improve the effectiveness of Title IX.

Comments are encouraged on the following priority areas:

1. Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?

2. Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?

3. Is further guidance or are other steps needed at the junior and senior high school levels where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?

4. How should activities such as cheerleading or bowling factor into the analysis of equitable opportunities?

5. How do revenue producing and large-roster teams affect the provision of equal athletic opportunities? The Department has heard from some parties that whereas some men athletes will "walk-on" to intercollegiate teams—without athletic financial aid and without having been recruited—women rarely do this. Is this accurate and, if so, what are its implications for Title IX analysis?

6. In what ways do opportunities in other sports venues, such as the Olympics, professional leagues, and community recreation programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity? What are the implications for Title IX?

7. Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area?

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/legislation/FedRegister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Dated: November 18, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02-29712 Filed 11-21-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03-14; Radiopharmaceutical and Molecular Nuclear Medicine Science Research— Medical Applications Program

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for research to support DOE/OBER Medical Applications Program areas in radiopharmaceuticals and molecular nuclear medicine. These program areas involve multifunctional, highly designed tracer molecules for precise in vivo tagging and noninvasive imaging assay of cellular and subcellular elements at the dynamic organ function, onset and progression of disease, and response to successful or failing therapy.

Research areas of particular programmatic interest include:

1. New tracer technologies for real-time, in vivo imaging of gene expression in health and disease.

2. New radiotracer labeling of progenitor cells for noninvasively imaging and tracking their behavior and fate in vivo and their overall role in organ and tissue regeneration in disease states.

3. New radiotracers for in vivo targeting of mutated proteins critical to carcinogenesis and tumor cell growth.

4. New generation of radiotracers enabling in vivo imaging assay of neurotransmitter chemistry and brain function.

DATES: Preapplications (letters of intent), including information on collaborators, and a one-page summary of the proposed research, should be submitted by January 2, 2003.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., Monday, February 24, 2003, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Preapplications referencing Program Notice 03-14, should be sent to Ms. Sharon Betson by E-mail:

sharon.betson@science.doe.gov, with a copy to Dr. Prem C. Srivastava at: prem.srivastava@science.doe.gov.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: <http://e-center.doe.gov/>. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS.

Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: HelpDesk@e-center.doe.gov or you may call the help desk at: (800) 683-0751. Further information on the use of IIPS by the Office of Science is available at: <http://www.sc.doe.gov/production/grants/grants.html>.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903-5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Prem C. Srivastava, Office of Biological and Environmental Research, Medical Sciences Division, U.S. Department of Energy, SC-73/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585-1290, Telephone: (301) 903-4071, FAX: (301) 903-0567, E-mail:

prem.srivastava@science.doe.gov. The full text of Program Notice 03-14 is available via the Internet using the following web site address: <http://www.sc.doe.gov/production/grants/Fr03-14.html>.

SUPPLEMENTARY INFORMATION: For over 50 years, the Department's Office of Science and its predecessors have supported basic physical science research for meeting the Nation's defense and security needs. The SC's Office of Biological and Environmental Research program has served as the Department's primary research arm for addressing the health and environmental consequences and potential public pay-offs of atomic energy explorations and use by translating the fundamental energy science to basic technology innovations and development for medical applications. Along the way, the OBER's Medical Applications program has leveraged the Department's unique capabilities in radiation chemistry, physics, engineering, computation, and biology, together with capabilities in and responsibilities for radiation detection and nuclear materials to support basic, high-risk research that today provides the upstream basis to use radiation and other energy technologies in medicine.

The mission of the OBER Medical Applications subprogram is to deliver relevant scientific knowledge that will lead to innovative diagnostic and treatment technologies for human health. The basic research technologies growing out of this program offer applications for noninvasive detection, diagnosis and early intervention of natural causes of disease, as well as of human-health-risks associated with the exposure of chemical, biological and nuclear material.

The modern era of nuclear medicine is an outgrowth of the original charge of the Atomic Energy Commission (AEC), "to exploit nuclear energy to promote

human health." Today the program through radiopharmaceutical, molecular nuclear medicine and multimodal imaging systems research, seeks to develop new applications of radiotracers and radionuclide detectors in diagnosis and treatment by integrating the latest concepts and developments in chemistry, pharmacology, genomic sciences and transgenic animal models, structural, computational and molecular biology, and instrumentation.

The Medical Applications program supports directed nuclear medicine research through radiopharmaceutical development, molecular nuclear medicine and medical imaging instrumentation program activities to study uses of radioisotopes for non-invasive diagnosis and targeted, internal molecular radiotherapy. Molecules directing or affected by homeostatic controls always interact and, thus, are targets for specific molecular substrates. The substrate molecules can be tailored to fulfill a specific need and labeled with appropriate radioisotopes to become measurable in real time in the body on their way to, and in interaction with their targets allowing the analysis of molecular function in homeostatic control in health and disease. The function of radiopharmaceuticals at various sites in the body is imaged by nuclear medical instruments, such as gamma cameras and positron emission tomographs (PET). This type of imaging refines diagnostic differentiation at molecular/metabolic levels between health and disease, and among various diseases, often leading to more effective therapy.

Basic research in molecular biology has provided new insights to the molecular basis of disease and molecular targets of human diseases. The current Radiopharmaceutical and Molecular Nuclear Medicine programs encourage development of new generation of radiolabeled molecules and technologies for molecular delivery of radioisotopes to the disease-target-sites with a high degree of precision, recognition, and target selectivity.

In addition, nuclear medicine, with the availability of miniaturized PET technology for small animal imaging, can facilitate mapping of the biochemistry of the metabolic organ function, visualizing the molecular biology of cell function, and zooming in on gene function for delineating differences in molecular biology of normal health from disease, in animals to humans.

With the advent of the genome project and the development of transgenic mice, there has been a rapid proliferation of

small animal models of human diseases, and improvement in instrumentation technologies for in vivo optical and radionuclide imaging. These technological advancements have offered a paradigm shift in the current level of nuclear medicine research challenges and opportunities. It is expected that radiopharmaceutical and molecular nuclear medicine techniques will permit analysis of the molecular elements as markers of genetic manipulations, biological transformations and progression of the disease, and will provide insights to molecular pathways of disease and gene function.

This Notice is to solicit applications for grants in any of the four research areas of interest to OBER Medical Applications program listed above.

Imaging Gene Expression in Health and Disease: The specific goals include development of nuclear medicine driven technologies to image mRNA transcripts in real time in tissue culture and whole animals. Special consideration will be given to applications arising from a well integrated, multidisciplinary team effort of scientists with skills to address the needs, issues and importance of nucleic acid biochemistry, radioligand synthesis and macromolecular interactions; functional consequences of gene expression by targeting and perturbing the activity of a particular gene; and biological applications of optical and radionuclide imaging devices; contributing to the goal of imaging specific gene expression in real time in animals to humans. The access to, or availability of specialized molecular radioligands, transgenic animal models of human disease, and biological imaging devices for real time imaging in animals to humans, will be important factors for funding considerations. Methodological approaches that are applicable to any mRNA species are encouraged. The development of generic methods to image specific gene expression will result in major advances in our understanding of developmental biology, cancer induction and pathogenesis, and in the clinical detection of inherited and acquired diseases. Such studies are therefore one of the major focus areas of this program. Currently the expression of endogenous genes in animals (including humans) cannot be imaged, at least not directly. A well integrated team effort from the overlapping disciplines of chemistry and radiopharmaceutical chemistry, cellular and molecular biology, and biological and nuclear medicine imaging will be increasingly important. It will be important for each application

to address response in view of the following research areas, which may be crucial for progress in imaging gene expression:

(1) New generation of radioligand molecules that will interact with the macromolecular nucleic acid structures in vivo.

(2) Molecular technologies which will significantly improve the signal to background ratio and will make in vivo imaging feasible. Molecular signal amplification methods are not yet available that work in vivo at the mRNA level and technological advancement in this area is well desired.

(3) Equally important is the hurdle of drug targeting technology, which must be developed to such an extent that the various biological barriers can be safely surmounted in vivo.

(4) Finally, the fluorescent molecular imaging technologies available for more routine in vitro screening and in vivo real time imaging, that can be used as a proof of principle and a prelude to in vivo nuclear medicine imaging, should be exploited in conjunction with nuclear medicine devices.

Radiopharmaceutical Research for Noninvasive Radiotracer-Cell Imaging (NRI) In Vivo

Progenitor Cells: The term progenitor cells implies non-embryonic stem cells, and does *not* include embryonic stem cells. For definitions, refer to National Institutes of Health (NIH) web sites, and all grantees must adhere to federal guidelines when involving human subjects. <http://www.nih.gov/news/stemcell/primer.htm> and <http://www.nih.gov/news/stemcell/index.htm>.

Breakthrough research in the biology of inter-organ and tissue cell repopulation and transformation has offered new paradigms for radiotracer imaging research in resolving the issues of progenitor cell administration including their trafficking, biodistribution, fate and progeny in organ and tissue regeneration, repair and replacement, with wide applications to human disease states such as neurogenesis, myogenesis, hematopoiesis, including stroke, ischemic heart disease, Parkinson's disease, hematopoietic disorders and cancers. This NRI specific program announcement offers challenging research opportunities for new radiotracer technology innovations for emerging new clinical research needs and medical applications.

The specific goals include radiotracer labeling of progenitor cells for noninvasively imaging and tracking their behavior and fate in vivo and their overall role in organ and tissue

regeneration in disease states. The researchers should clearly demonstrate the relevance and important clinical need of the research proposed. Special consideration will be given to applications arising from a well-integrated, multidisciplinary team effort of scientists with relevant skills in radiopharmaceutical chemistry, biology, pharmacology and clinical nuclear medicine. The access to, or availability of specialized radiotracer-labeling and imaging instrumentation, equipment and facilities for real time imaging in animals to humans, will be important factors for funding considerations.

New Radiotracers for Targeting Mutated Proteins Critical to Carcinogenesis and Tumor Cell Growth

Radiolabeled molecular probes for targeting protein mutations critical to carcinogenesis and tumor cell growth would be unique tools for *in vivo* measuring of kinase pathways, for early diagnosis of cancer, for monitoring cancer therapy, and for understanding the mechanism of action of drugs targeting protein kinase activity in the development of new therapeutic drugs. Important therapeutic agents are being developed based on their specificity for protein kinases critically involved in intracellular signaling pathways, and there are likely to be about two thousand protein kinases encoded by the human genome. In recent years several small molecules have been identified to exhibit high degree of specificity for particular protein kinases, and a myriad of other compounds have also been identified as inhibitors of receptor tyrosine kinases and of mitogen-activated protein kinase cascades. Interaction of these compounds with these key kinases results in blockade of signal transduction and inhibition of cell cycle progression. This knowledge has resulted in the discovery of molecules with high specificity for several protein kinases and has provided a new view to cancer treatment. It also provides a challenging perspective for *in vivo* quantification of these intracellular pathways controlling cell proliferation and critically involved in cancer progression.

The Department, through its synchrotron light sources facilities, contributes significantly to genomics/proteomics, *i.e.* protein analysis and structural genomics, and allows the structural biologists to find the specific parts of the protein structure that are most vulnerable to drugs or that may be key to carcinogenesis. The Department's investments in biophysics, chemistry, robotics and supercomputing, have

made it possible to rapidly investigate the detailed arrangements of atoms and understand the function of thousands of proteins whose structures are coded by the genome of animals, bacteria and plants. Harnessing of the structural genomics/proteomics information will be a key to designing new small radiotracer molecules for precisely targeting the vulnerable areas of a mutated protein structure expressing cancer. Radiotracer molecules like these will be useful in laboratory investigations, and validation as molecular imaging probes for early diagnosis of cancer and management of cancer therapeutics.

New generation of radiotracers enabling in vivo imaging assay of neurotransmitter chemistry and brain function: New generation of highly innovative and target specific radiotracer molecules are required as diagnostic markers for noninvasively imaging the regional biochemistry associated with metabolic organ function and performance, for guiding surgery, and for guiding new drug development.

Program Funding

It is anticipated that up to \$4 million will be available for multiple grant awards during Fiscal Year 2003, contingent upon the availability of appropriated funds. Previous awards have ranged from \$200,000 up to \$400,000 per year (direct plus indirect costs) with terms lasting up to three years. Similar award sizes are anticipated for new grants. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs.

Preapplications

A brief preapplication (letter of intent) should be submitted. The preapplication should identify, on the cover sheet, the title of the project, the institution, principal investigator's name, address, telephone, fax, and E-mail address. The preapplication should consist of one to two pages identifying and describing the research objectives, methods for accomplishment, and the key members of the scientific team responsible for undertaking this effort, including information on collaborators. Preapplications will be evaluated relative to the scope and programmatic research needs.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending

order of importance as codified at 10 CFR 605.10(d):

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

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

Submission Information

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

In addition, for this Notice, the Project Description must be 20 pages or less, exclusive of attachments, and the application must contain a Table of Contents, an abstract or project summary, letters of intent from collaborators (if any), and short curriculum vitae consistent with National Institutes of Health guidelines. On the SC grant face page, form DOE F4650.2, in block 15, also provide the PI's phone number, fax number, and E-mail address.

DOE policy requires that potential applicants adhere to 10 CFR 745 "Protection of Human Subjects", or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall

comply with NIH "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: <http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf>, (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

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

Issued in Washington, DC on November 15, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02-29751 Filed 11-21-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-77-000]

Reliant Energy Services, Inc., Complainant, v. Florida Gas Transmission Company, Respondent; Notice of Complaint and Request for Fast Track Processing

November 18, 2002.

Take notice that on November 15, 2002, Reliant Energy Services, Inc. (RES) filed a Complaint and Request for Fast Track Processing against Florida Gas Transmission Company (FGT) requesting that the Federal Energy Regulatory Commission (Commission) find that FGT is in violation of its tariff by demanding a letter of credit far in excess of that permitted by the creditworthiness provisions of FGT's tariff and excluding, on an unduly discriminatory basis in violation of sections 5 and 7 of the Natural Gas Act (NGA), RES from an expansion project unless RES posts a letter of credit far in excess of that permitted by the creditworthiness provisions of FGT's tariff. RES also contends that FGT has indicated an intention to build an expansion project that is inconsistent with its certificate authorization. RES requests that the Commission issue an order finding and declaring that FGT's notification to RES that FGT intends to terminate its contractual obligation to provide firm transportation service to RES through use of the Phase VI facilities is unduly discriminatory, in violation of FGT's tariff, the Commission's certificate issued to FGT for its phase VI Facilities expansion in Docket No. CP02-27-000, and the NGA.

A copy of the filing was served upon the Respondent.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before November 25, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-29749 Filed 11-21-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03-15-000, et al.]

Termoelectrica U.S., LLC, et al.; Electric Rate and Corporate Filings

November 15, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Termoelectrica U.S., LLC

[Docket No. EG03-15-000]

On November 12, 2002, Termoelectrica U.S., LLC (Applicant), located at 101 Ash Street; San Diego, California 92101, filed with the Federal Energy Regulatory Commission

(Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant will own the United States portion of a transmission line connecting a natural gas-fired and steam-fired generating facility located west of Mexicali in Baja California, United Mexican States to the already existing San Diego Gas & Electric Company Imperial Valley substation. The generating facility will be directly owned and operated by Termoelectrica de Mexicali, S. de R.L. de C.V.

Comment Date: December 6, 2002.

2. Riverview Energy Center, LLC

[Docket No. EG03-16-000]

Take notice that on November 12, 2002, Riverview Energy Center, LLC (Riverview) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Riverview, a Delaware limited liability company, proposes to own and operate a nominally rated 45 MW natural gas-fired, simple cycle electric generating facility to be located in Contra Costa County, California. Riverview intends to sell the output at wholesale to an affiliated marketer.

Comment Date: December 6, 2002.

3. Manchief Power Company, L.L.C.

[Docket No. EG03-18-000]

Take notice that on November 13, 2002, Manchief Power Company, L.L.C., with its principal place of business at 1001 Louisiana Street, P.O. Box 2511, Houston, Texas, 77002, 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. Manchief Power Company, L.L.C. is a Delaware limited liability company that owns a generation facility near Brush, Colorado.

Comment Date: December 6, 2002.

4. PPL Great Works, LLC

[Docket No. ER99-4503-002]

Take notice that on November 8, 2002, PPL Great Works, LLC filed an updated market power analysis pursuant to the Commission's order in Middleton Power LLC, 89 FERC ¶ 61,151 (1999).

PPL Great Works, LLC served a copy of this filing on the parties on the Commission's official service list for this docket.

Comment Date: November 29, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[FERC Docket No. ER02-290-002]

Take notice that on November 12, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing its Process for the Use of Network Resources Outside of the Midwest ISO and Resolving Competing Requests for Transmission Service Among Network Customers and between Point-to-Point and Network Customers as Attachment U to its Open Access Transmission Tariff in compliance with the Commission's October 10, 2002 Order issued in Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,030.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: December 3, 2002.

6. Thompson River Co-Gen, LLC

[Docket No. ER02-298-001]

Take notice that on November 12, 2002, Thompson River Co-Gen, LLC (Thompson) petitioned the Commission for acceptance of Thompson Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and waiver of certain Commission regulations.

Thompson intends to sell at wholesale electricity generated from a 16-megawatt cogeneration facility located in Thompson Falls, Montana, to NorthWestern Energy, LLC, (NWE). Thompson does not intend to make other wholesale sales of electricity to any entity other than NWE. Thompson is an LLC with passive ownership interests, and Barry Bates and Lawrence Underwood are the Partners and will manage Thompson's day-to-day business. Thompson has no legal or economic interest, and is not in any way related to, any utility or other entity that owns any generation, transmission or other jurisdictional facilities.

Comment Date: December 3, 2002.

7. Duke Energy Corporation

[Docket Nos. ER02-2480-002 and EL02-118-000]

Take notice that on November 12, 2002, Duke Energy Corporation filed its compliance filing in the above captioned proceeding.

Comment Date: December 3, 2002.

8. Consumers Energy Company

[Docket No. ER03-153-001]

Take notice that on November 12, 2002, Consumers Energy Company (Consumers) filed a Service Agreement No. 50 under its Electric Sales Tariff FERC No. 7. A cover sheet, in accordance with the provisions of Order 614, was mistakenly not included with the filing. Attached is a cover sheet.

Comment Date: December 3, 2002.

9. Westar Energy, Inc.

[Docket No. ER03-172-000]

Take notice that on November 12, 2002, Westar Energy, Inc. (Westar) submitted for filing Service Schedule WRC-10/2002 (Schedule), which will supercede Service Schedule WRC-8/2002 with Federal Energy Regulatory Commission (Commission) approval. The Schedule is proposed to be effective on October 31, 2002. The changes in the Schedule provide for customers taking service under the Schedule to receive billing credits for alternative resources obtained from third parties or other Westar tariffs.

A copy of this filing was served upon the Kansas Corporation Commission, Kaw Valley Electric, Nemaha-Marshall Electric Cooperative Association, Inc. and Doniphan Electric Cooperative.

Comment Date: December 3, 2002.

10. Cinergy Services, Inc.

[Docket No. ER03-174-000]

Take notice that on November 12, 2002, Cinergy Services, Inc. (Cinergy), on behalf of PSI Energy, Inc (PSI), a Cinergy Corp. utility operating company, tendered for filing a Notice of Termination of an Interconnection Agreement (IA) and Facility Construction Agreement (FCA) between Cinergy and Duke Energy Vigo, LLC. Termination of the IA and FCA has been mutually agreed to by Cinergy and Duke Energy Vigo, LLC.

Comment Date: December 3, 2002.

11. Termoelectrica U.S., LLC

[Docket No. ER03-175-000]

Take notice that on November 12, 2002, Termoelectrica U.S., LLC., (Termoelectrica US) tendered for filing pursuant to Rule 205, 18 CFR 3 85.205, a petition for waivers and blanket approvals under various regulations of

the Commission and for an order accepting its Rate Schedule authorizing Termoelectrica U.S. to make sales at market-based rates. Termoelectrica U.S. has requested waiver of the Commission's regulations to permit an effective date of sixty days from the date of this filing.

Termoelectrica U.S. intends to sell electric power and ancillary services at wholesale. In transactions where Termoelectrica U.S. sells electric power or ancillary services it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. I provides for the sale of energy and capacity and ancillary services at agreed prices.

Comment Date: December 3, 2002.

12. Kansas City Power & Light Company

[Docket No. ER03-176-000]

Take notice that on November 12, 2002, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 3, dated September 28, 2002 between Kansas City Power & Light Company (KCPL) and the Board of Public Utilities of Kansas City, Kansas. KCPL proposes an effective date of December 1, 2002 and requests any necessary waiver of the Commission's notice requirement.

Comment Date: December 3, 2002.

13. American Electric Power Service Corporation

[Docket No. ER03-177-000]

Take notice that on November 12, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed amended and restated Interconnection and Operation Agreement between Columbus Southern Power Company and Duke Energy Franklin LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 10, 2002.

AEP requests an effective date of June 25, 2001, the same effective date of the Interconnection and Operation Agreement in Commission's Order Conditionally Accepting Unexecuted Interconnection and Operation Agreement issued in this docket on June 28, 2001, 95 FERC ¶ 61,472. A copy of the filing was served upon the Ohio Public Utilities Commission.

Comment Date: December 3, 2002.

14. PJM Interconnection, L.L.C.

[Docket No. ER03-178-000]

Take notice that on November 12, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and Reliant Energy Hunterstown, L.L.C.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties. Copies of this filing were served upon Reliant Energy Hunterstown, L.L.C. and the state regulatory commissions within the PJM region.

Comment Date: December 3, 2002.

15. FPL Energy New Mexico Wind, LLC

[Docket No. ER03-179-000]

Take notice that on November 12, 2002, FPL Energy New Mexico Wind, LLC tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: December 3, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The

Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-29744 Filed 11-21-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. DI03-1-000]

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

November 18, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI03-1-000.

c. *Date Filed:* November 5, 2002.

d. *Applicant:* Jo A. Miller.

e. *Name of Project:* Miller/Fish Creek Project.

f. *Location:* The Miller/Fish Creek Project would be located in sec. 28, portion of Gov't Lot 4 and SW $\frac{1}{4}$ SE $\frac{1}{4}$; sec. 33, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, T. 32 N., R. 28 E., W.M., on Fish Creek 3/8 mile from Lake Chelan, Chelan County, Washington. The project will occupy Federal land.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Jo A. Miller, 22905 Riverview Road, Chelan, WA 98816, telephone (509) 689-0909.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray (202) 502-8838, or e-mail address: diane.murray@ferc.gov.

j. *Deadline for filing comments and/or motions:* December 20, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov>.

Please include the docket number (DI03-1-000) on any comments or motions filed. k. *Description of Project:* The proposed Miller/Fish Creek Project would consist of: (1) A diversion, located on Government Lot No. 4,

consisting of a 10-inch-diameter, 5-foot-long, stainless steel screened inlet; (2) a 42-foot-long, 10-inch steel pipeline encased in a 16-inch carrier pipe; (3) a 1,200-foot-long, 10-inch pipe reduced to 6 inches at the powerhouse; (3) a powerhouse containing one generating unit, with a total rated capacity of 6.7 kW; and (4) a 6-inch return flow pipe back to Fish Creek; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at <http://www.ferc.gov> using the "FERRIS" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS

AND CONDITIONS”, “PROTEST”, OR “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency’s comments must also be sent to the Applicant’s representatives.

Linwood A. Watson, Jr.

Deputy Secretary.

[FR Doc. 02–29742 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI03–2–000]

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

November 18, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI03–2–000.

c. *Date Filed:* October 15, 2002.

d. *Applicant:* Village of Milford, MI.

e. *Name of Project:* Pettibone Creek Hydro Project.

f. *Location:* The Pettibone Creek Hydro Project would be located on Pettibone Creek a tributary of the Huron River, Oakland County, Michigan. The project will not occupy Federal or tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Frank Christie, Christie Engineering, 359 River Street, Suite 202, Manistee, MI 49660, telephone number/FAX (231) 398–0625.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray (202) 502–8838, or E-mail address: diane.murray@ferc.gov.

j. *Deadline for filing comments and/or motions:* December 20, 2002.

All documents (original and eight copies) should be filed with: Magalie R.

Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary’s Office. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site at <http://www.ferc.gov>

Please include the docket number (DI03–2–000) on any comments or motions filed.

k. *Description of Project:* The proposed Pettibone Creek Hydro Project would consist of: (1) A 15-foot-high, 90-foot-long dam; (2) a 3,400-foot-long penstock; (3) a generator with a capacity of 50 kW; (4) a tailrace discharging into the Huron River; (5) a 500-foot-long buried transmission line; and (6) appurtenant facilities. The plant will be serviced by the Detroit Edison Power Company.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project’s head or generating capacity, or have otherwise significantly modified the project’s pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at <http://www.ferc.gov> using the “FERRIS” link, select “Docket#” and follow the instructions. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission’s mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will

consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission’s Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title “COMMENTS”, “RECOMMENDATIONS FOR TERMS AND CONDITIONS”, “PROTEST”, OR “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency’s comments must also be sent to the Applicant’s representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29743 Filed 11–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

November 18, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12190–000.

c. *Date filed:* June 10, 2002.

d. *Applicant:* Lake Cachuma Hydro, LLC.

e. *Name and Location of Project:* The Lake Cachuma Project would be located on the Santa Ynez River in Santa Barbara County, California. The proposed project would utilize an existing dam administered by the U.S. Bureau of Reclamation (BOR) and would be partially located on lands administered by the BOR.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745-0834.

h. *FERC Contact:* Tom Papsidero, (202) 502-6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12190-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use the BOR's existing Bradbury Dam and Reservoir and would consist of: (1) A proposed powerhouse with a total installed capacity of 2 megawatts, (2) a proposed 500-foot-long, 5-foot-diameter penstock, (3) a proposed 1-mile-long, 25 kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 15.4 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3678 or e-mail ferconlinesupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at Lake Cachuma Hydro, LLC., 975 South State Highway, Logan, UT 84321, (435) 752-2580.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for a preliminary permit for a proposed project must submit the

competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-29745 Filed 11-21-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant-Prepared Environmental Assessment Tendered and Accepted for Filing, Notice Soliciting Motions To Intervene and Protests, Notice Soliciting Comments, Final Terms and Conditions, Recommendations and Prescriptions, Notice Establishing Procedures for Relicensing and Submission of Final Amendments

November 18, 2002.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been tendered and accepted for filing

with the Commission, and is available for public inspection:

- a. *Type of Application*: New License.
 - b. *Project No.*: 201–014.
 - c. *Date filed*: October 30, 2002.
 - d. *Applicant*: Petersburg Municipal Power and Light (PMPL).
 - e. *Name of Project*: Blind Slough Hydroelectric Project.
 - f. *Location*: On Crystal Creek, Mitkof Island, near the City of Petersburg, Alaska.
 - g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)—825).
 - h. *Applicant Contact*: Dennis C. Lewis, Superintendent, Petersburg Municipal Power and Light, P.O. Box 329, 11 South Nordic, Petersburg, Alaska 99833, 907–772–4203, email: pmp1@alaska.net; or Nan A. Nalder, Relicensing Manager, Acres International, 150 Nickerson St., Suite 310, Seattle, WA 98109, 206–352–5730 e-mail: acresnan@serv.net.
 - i. *FERC Contact*: Vince Yearick, FERC, 888 First Street, NE., Room 61–11, Washington, DC 20426, (202) 502–6174, e-mail: vince.yearick@ferc.gov.
 - j. *Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance date of this notice; and reply comments 105 days from the date of this notice.
- All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Documents may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.
- The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.
- k. *Brief Project Description*: The 2.4-megawatt (MW) project is located on Crystal Creek in Southeast Alaska approximately 16.5 highway miles south of the City of Petersburg on the southern portion of Mitkof Island. The project does not occupy any federal lands. The project generates an average of about 11,308,410 kilowatt-hours (kWh) annually which provides approximately 28 percent of PMPL's

energy requirements. The project is also the principal source of water supply for the Crystal Lake Hatchery. Petersburg proposes no new capacity and no new construction. The primary features of the project include: a dam at the outlet of Crystal Lake; a pumpback system located at the base of Crystal Lake Dam; approximately 4,600 feet of penstock with a static head of 1,256 feet; two powerhouse structures situated near Blind Slough; and a tailrace system providing water to the fish hatchery and returning water to Crystal Creek.

l. *Locations of the application*: A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

m. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item o. below.

n. *Relicensing schedule and final amendments*: The application will be processed according to the following schedule:

Notice of the availability of the NEPA document—April, 2003.

Order issuing the Commission's decision on the application—July, 2003.

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice soliciting final terms and conditions.

o. *Comments, Recommendations, Terms and Conditions, Prescriptions, and Reply Comments*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be

received on or before the specified comment date for the particular application.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," OR "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis; and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29746 Filed 11–21–02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments**

November 18, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application*: Non-project use of project lands-Excavation Proposal.
- b. *Project No.*: P-2177-052.
- c. *Date filed*: October 25, 2002.
- d. *Applicant*: Georgia Power Company.
- e. *Name and Location of Project*: Middle Chattahoochee Project located on Lake Oliver in Lee County, Alabama.
- f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791(a)—825r).
- g. *Applicant Contact*: William Glisson, Senior Land Management Specialist, Georgia Power Company, 1516 Bartletts Ferry Road, Fortson, Georgia 31808 (706) 322-0228.
- h. *FERC Contact*: Elizabeth Jones (202) 502-8246.
- i. *Deadline for filing comments, protests, and motions to intervene*: December 13, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-2177-052) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Filing*: Georgia Power Company is requesting Commission approval to grant a permit to Mr. Steve Atchley (permittee) to excavate 2,500 cubic yards of material. The excavation site is at Lake Oliver in a slough

adjacent to River Oak Way in Phenix City, Alabama. The excavation would occur during drawdown conditions. The material would be deposited on an upland site located away from the Lake.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail

FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659.

l. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

m. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

n. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-29747 Filed 11-21-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 469-013]

Notice Extending Deadline for Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 18, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Major License.

b. *Project No.*: 469-013.

c. *Date filed*: October 30, 2001.

d. *Applicant*: ALLETE, Inc., d.b.a. Minnesota Power Inc.

e. *Name of Project*: Winton Hydroelectric Project.

f. *Location*: On the Kawishiwi River, near the Town of Ely, in Lake and St. Louis Counties, Minnesota. The project occupies federal lands within the Superior National Forest.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)—825(r)

h. *Applicant Contact*: John Paulson, Minnesota Power, 30 West Superior Street, Duluth, MN 55802, jpaulson@mnpower.com, 218-722-5642, ext. 3569.

i. *FERC Contact*: Tom Dean, thomas.dean@ferc.gov, 202-502-6041.

j. In letters dated October 17, 2002, from the U.S. Forest Service, October 18, 2002, from the Minnesota Department of Natural Resources and the Conservationists With Common Sense, and October 21, 2002, from Minnesota Power requested an extension of time until February 14, 2002, to complete a Settlement Agreement (SA) and accompanying Explanatory Statement (ES), and to file comments, recommendations, terms and conditions, and prescriptions in response to a notice ready for environmental analysis (REA) issued on September 13, 2002. The REA notice set the deadline for filing comments and recommendations 60 days from the issuance date of the notice, or November 11, 2002.

The Commission is committed to processing license applications in a

timely manner and can not suspend processing the application (including extending the REA comment deadline date) until February 2003, in hopes that the collaborative team will reach a settlement.

The Commission's goal is to issue a draft and final EA during the spring and summer of 2003, respectively, and be ready for a Commission decision on the application by September 2003, prior to the October 31, 2003, license expiration date. The requests to file the SA and ES by February 14, 2003, could delay taking final action on the license application beyond the license expiration date. Therefore, a limited extension of time is granted to file the SA, ES, and comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* December 27, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site <http://www.ferc.gov> under the "e-Filing" link.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS",

"RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-29748 Filed 11-21-02; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. OAR-2002-0036; AD-FRL-7412-5]

National Emission Standards for Hazardous Air Pollutants: Revision of Area Source Category List Under Section 112(c)(3) and 112(k)(3)(B)(ii) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the area source category list under the Integrated Urban Air Toxics Strategy.

SUMMARY: This notice adds 23 area source categories of hazardous air pollutants (HAP) to the previous lists developed under the Integrated Urban Air Toxics Strategy (Strategy). With the addition of these categories, the requirement to identify and list area source categories representing at least 90 percent of the emissions of the 30 "listed" (or area source) HAP under section 112(c)(3) and 112(k)(3)(B)(ii) of the Clean Air Act (CAA) is fulfilled. The Strategy's area source category list constitutes an important part of EPA's agenda for regulating stationary sources of air toxics emissions.

These revisions to the list of area sources have not been reflected in any previous notices and are being made without public comment on the Administrator's own motion. Such revisions are deemed by EPA to be

without need for public comment based on the nature of the actions.

EFFECTIVE DATE: November 22, 2002.

ADDRESSES: The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara B. Driscoll, Policy, Planning and Standards Group, Emission Standards Division (C439-04), EPA, Research Triangle, Park, North Carolina 27711, facsimile number (919) 541-0942, telephone number (919) 541-1051, electronic mail (e-mail): driscoll.barbara@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The EPA has established an official public docket for this action under the Docket ID No. OAR-2002-0036. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Docket is (202) 566-1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document. Once in the system, select "search," then key in the appropriate docket identification.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's notice will also be available on the WWW through the Technology Transfer Network

(TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page, <http://www.epg.gov/ttn/oarpg>. The TNN provides information and technology exchange in various areas of air pollution control. If more information regarding the TNN is needed, call the TNN HELP line at (919) 541-5384.

I. What Is the History of the Integrated Urban Air Toxics Strategy Area Source Category List?

The CAA includes two provisions, section 112(c)(3) and 112(k)(3)(B)(ii), that instruct EPA to identify and list area source categories accounting for at least 90 percent of the emissions of the 30 "listed" (or area source) HAP (64 FR 38706, July 19, 1999), and that are, or will be, subject to standards under section 112(d) of the CAA. For this effort, we have used urban area source information from the section 112(k) inventory, which represents a baseline year of 1990. In the July 1999 Strategy, we identified 16 area source categories that had already been listed for regulation under the CAA, and 13 area source categories that were being listed under section 112(c)(3) for the first time. These 29 area source categories are:

- Cyclic Crude and Intermediate Production
- Flexible Polyurethane Foam Fabrication Operations
- Hospital Sterilizers
- Industrial Inorganic Chemical Manufacturing
- Industrial Organic Chemical Manufacturing
- Mercury Cell Chlor-Alkali Plants
- Gasoline Distribution Stage 1
- Municipal Landfills
- Oil and Natural Gas Production
- Paint Stripping Operations
- Plastic Materials and Resins Manufacturing
- Publicly Owned Treatment Works
- Synthetic Rubber Manufacturing
- Chromic Acid Anodizing
- Commercial Sterilization Facilities
- Other Solid Waste Incinerators (Human/Animal Cremation)
- Decorative Chromium Electroplating
- Dry Cleaning Facilities
- Halogenated Solvent Cleaners
- Hard Chromium Electroplating
- Hazardous Waste Combustors
- Industrial Boilers
- Institutional/Commercial Boilers
- Medical Waste Incinerators
- Municipal Waste Combustors
- Open Burning Scrap Tires
- Portland Cement
- Secondary Lead Smelting
- Stationary Internal Combustion Engines.

Each of the first 13 area source categories above, which were listed for the first time in June 1999, contributed at least 15 percent of the total area source urban emissions for at least one of the 30 area source HAP. We also took credit for the percentage of emission contribution from the last 16 area source categories on the list above. Since then, we added Secondary Aluminum Production to our list of major and area source categories (66 FR 8220, January 30, 2001). On June 26, 2002, we listed an additional 18 area source categories:

- Acrylic Fibers/Modacrylic Fibers Production
- Plating and Polishing
- Agricultural Chemicals & Pesticides Manufacturing
- Autobody Refinishing Paint Shops
- Cadmium Refining & Cadmium Oxide Production
- Flexible Polyurethane Foam Production
- Iron Foundries
- Lead Acid Battery Manufacturing
- Miscellaneous Organic Chemical Manufacturing (MON)
- Pharmaceutical Production
- Polyvinyl Chloride & Copolymers Production
- Pressed and Blown Glass & Glassware Manufacturing
- Secondary Copper Smelting
- Secondary Nonferrous Metals
- Sewage Sludge Incineration
- Stainless and Nonstainless Steel Manufacturing Electric Arc Furnaces (EAF)
- Steel Foundries
- Wood Preserving.

The listing of all these categories, however, did not meet the requirement to list area sources representing 90 percent of the area source emissions of the 30 area source HAP. In the Strategy, we indicated that we would be adding additional area source categories as necessary to meet the 90 percent requirement and would complete our listing by 2003.

II. Why Is EPA Issuing This Notice?

Under the provisions of section 112(c)(3) and 112(k)(3)(B)(ii), this notice announces the addition of 23 area source categories to the list initially published on July 19, 1999 (64 FR 38721), amended on January 30, 2001 (66 FR 8220), and on June 26, 2002 (67 FR 43112). While this listing is again based on the section 112(k) inventory which represents urban area information for 1990, current information will be used for any type of regulatory development. Each of the source categories contributes a percentage of the total area source emissions for at least one of the 30 area

source HAP and completes our requirement to address 90 percent of the emissions of each of the 30 area source HAP. The additional area source categories being listed pursuant to section 112(c)(3) and 112(k)(3)(B)(ii) are:

- Asphalt Processing and Asphalt Roofing Manufacturing
- Brick and Structural Clay Products Manufacturing
- Carbon Black Production
- Chemical Manufacturing: Chromium Compounds
- Chemical Preparations
- Clay Ceramics Manufacturing
- Industrial Machinery and Equipment: Finishing Operations
- Copper Foundries
- Electrical and Electronics Equipment: Finishing Operations
- Ferroalloys Production: Ferromanganese and Silicomanganese
- Fabricated Metal Products Manufacturing, not elsewhere classified (nec)
- Fabricated Plate Work (Boiler Shops)
- Fabricated Structural Metal Manufacturing
- Heating Equipment Manufacturing, Except Electric
- Inorganic Pigments Manufacturing
- Iron and Steel Forging
- Nonferrous Foundries, nec
- Paints and Allied Products Manufacturing
- Plastic Parts and Products (Surface Coating)
- Prepared Feeds Manufacturing
- Primary Copper Smelters
- Primary Metals Products Manufacturing
- Valves and Pipe Fittings Manufacturing

In addition to adding these area source categories, EPA is also revising the name of the area source category Cadmium Refining and Cadmium Oxide Production to Primary Nonferrous Metals—Zinc, Cadmium and Beryllium. This category is also being expanded to include these other operations: Primary Smelting and Refining of Zinc, and Primary Nonferrous Metals. Expanding this source category to include these additional operations is needed to meet the 90 percent requirement for several HAP. The name of the area source category Lead and Acid Battery Manufacturing is also changed to Lead Acid Battery Manufacturing.

In a recent notice, addressed in a separate **Federal Register** notice, the area source category Open Burning of Scrap Tires was removed from source categories included in the inventory analysis for section 112(c)(6) and 112(k). Consequently, that source category will no longer be a candidate for regulation

under either section 112(c)(6) or 112(k). As a result, two area source categories: Asphalt Processing and Asphalt Roof Manufacturing, and Carbon Black Production were added to the section 112(k) list above to ensure that 90 percent of the emissions of the HAP, polycyclic organic matter, are addressed.

III. Administrative Requirements

Today's notice is not a rule; it is essentially an information-sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), a regulatory action determined to be "significant" is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant" regulatory action as one that is likely to lead to a rule that may either: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action take or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The OMB has determined that this action is not significant under the terms of Executive Order 12866.

Dated: November 13, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02-29774 Filed 11-21-02; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6635-2]

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 November 11, 2002, through November 15, 2002,

Pursuant to 40 CFR 1506.9.

EIS No. 020466, Draft Supplement, FHW, MI, US-31 Freeway Connection from Napier Road to I-94 Project, transportation improvement, updated information, Berrien County, MI, comment period ends: January 3, 2003, contact: James Kirschensteiner (517) 702-1835.

EIS No. 020472, Draft Supplement, COE, FL, Upper ST. Johns River Basin and Related Areas, Central and Southern Florida Flood Control Project, proposed modifications to project features north of the Fellsmere Grade, to preserve and enhance floodplain and aquatic habitats, Brevard County, FL, comment period ends: January 3, 2003, contact: Esteban Jimerez (904) 232-2115.

EIS No. 020473, Draft EIS, BLM, NV, Ivanpah Energy Center Project, proposes to construct and operate a 500 Megawatt (MW) gas-fired electric power generating station in southern Clark County, NV, comment period ends: January 3, 2003, contact: Jerrold E. Crockford (505) 599-6333.

EIS No. 020474, Draft EIS, FHW, AK, South Extension of the Coastal Trail Project, to extend the existing Tony Knowles Coastal Trail from Kincaid Park through the project area to the Potter Weigh Station, COE section 10 and 404 permit, municipality of Anchorage, Anchorage, Alaska, comment period ends: January 8, 2003, contact: Tim A. Haugh (907) 586-7418. This document is available on the Internet at: <http://home.gci.net/~southtrail>.

EIS No. 020475, Draft EIS, USN, CA, China Lake Naval Air Weapons Station, proposed military operational increases and implementation of

associated comprehensive land use and integrated natural resources management plans, located in the North and South Range, Inyo, Kern and San Bernardino Counties, CA, comment period ends: February 18, 2003, contact: John O'Gara (076) 093-9321.

EIS No. 020476, Final EIS, COE, FL, Miami River Dredged Material Management Plan, river sediments dredging and disposal maintenance dredging, Biscayne Bay, city of Miami, Miami-Dade County, FL, wait period ends: December 23, 2002, contact: Daniel Small (404) 562-5224.

Amended Notices

EIS No. 020405, Draft EIS, FHW, NH, Interstate 93 Improvements, from Salem to Manchester, IM-IR-93-1(174)0, 10418-C, funding, NPDES and COE section 404 permits, Hillsborough and Rockingham Counties, NH, comment period ends: December 16, 2002, contact: William F. O'Donnell (603) 228-3057.

Revision of **Federal Register** notice published on 10/4/2002: CEQ comment period ending 11/18/2002 has been extended to 12/16/2002.

EIS No. 020445, Draft EIS, COE, Lake Sidney Lanier Project, to continue the ongoing operation and maintenance activities necessary of flood control, hydropower generation, water supply, recreation, natural resources management, and shoreline management, section 10 and 404 permits, Dawson, Forsyth, Lumpkin, Hill and Gwinnett Counties, GA, comment period ends: December 23, 2002, contact: Glen Coffee (251) 690-2727.

Revision of **Federal Register** notice published on 11/8/2002: correction to contact name and telephone number. Also Draft EIS is available on Internet at: <http://www.usacelakelanieriis.net/>.

Dated: November 19, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance, Office of Federal Activities.

[FR Doc. 02-29781 Filed 11-21-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6635-3]

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 17922).

Draft EISs

ERP No. D-AFS-L65404-AK Rating EC2, Kosciusko Island Timber Sale(s), Timber Harvesting, Tongass National Forest, Thorne Bay Ranger District, Kosciusko Island, AK.

Summary: EPA expressed environmental concerns about potential adverse impacts to water quality and quantity from road construction and timber harvest and aquatic resources in roadless areas, especially the Van Sant Creek watershed. EPA recommends that the final EIS include additional information on project impacts to these resources and on the drinking water supply.

ERP No. D-FHW-F40407-IN Rating EO2, I-69 Evansville to Indianapolis Corridor Study, I-69 Completion in Southwestern Indiana and Corridor Selection, IN.

Summary: EPA expressed environmental objections regarding the magnitude of impacts to wetland and aquatic resources, forests, farmland, and potential impacts to sensitive karst features. EPA expressed concern regarding future project compliance with Section 404 of the Clean Water Act and recommended the agencies reevaluate alternatives.

ERP No. D-FHW-J40156-ND Rating EC2, US 2 Highway Transportation Improvements from near U.S. 85 (milepost 31.93) to west of U.S. 52 (milepost 131.24), Funding, NPDES and U.S. Army COE Section 404 Permits Issuance, Williams, Mountrail and Ward Counties, ND.

Summary: EPA has environmental concerns about substantial losses of wetlands as a result of expanding the highway from two to four lanes. EPA recommends the development of an alternative with fewer impacts to wetlands and inclusion of sufficient information that is necessary to streamline the NEPA and 404 permit processes.

ERP No. D-NPS-J61022-MT Rating EC2, Glacier National Park—Going-to-Sun Road Rehabilitation Plan to Protect and Preserve a National Historic Landmark, Waterton-Glacier International Peace Park, The World's First International Peace Park, A World Heritage Site, MT.

Summary: EPA expressed environmental concerns with potential construction impacts to water quality, especially consistency of proposed road improvements with restoration and TMDL development. EPA also has concerns about potential impacts from disturbance to sensitive and fragile vegetation (e.g., State rare velvet-leaf blueberry plant), and wildlife and habitat adjacent to the roadway and near proposed visitor facility improvements.

ERP No. DS-AFS-F05123-00 Rating LO, Bond Falls Hydroelectric Project related to Terms and Conditions for Geology and Soils, Water Quality and Quantity, Fisheries, Terrestrial, Recreation, Aesthetic, Cultural, Socioeconomic and Land Use Resources, Ontonagon River Basin, Valas County, WI and Ontonagon and Gogebic Counties, MI.

Summary: EPA has no objections to the proposed terms and conditions for the Bond Falls Hydroelectric Relicensing Project.

ERP No. DS-AFS-L61199-ID Rating NS, Salmon Wild and Scenic River Management Plan, Timeline Change From December 31, 2002 to December 31, 2005 and Clarification of Economic Impacts on the Camps, Stub Creek, Arctic Creek and Smith Gulch Creek, Salmon National Forest, Salmon County, ID.

Summary: EPA Region 10 used a screening tool to conduct a limited review of the Salmon Wild and Scenic River Management Plan. Based upon the screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

Final EISs

ERP No. F-AFS-J65361-MT Black Ant Salvage Project, Salvage of 739 Acres of Dead Merchantable Trees from the Lost Fork Fire of 2001, Lewis and Clark National Forest, Meagher Basin County, MT.

Summary: EPA's environmental concerns about increased potential for erosion and sediment transport and compaction of sensitive post-fire soils during salvage logging were reduced with the selection of a new winter logging alternative. EPA recommended mitigation measures to avoid rutting of logging roads during spring breakup that could increase sediment to down-gradient 303(d) listed streams.

ERP No. F-NPS-E65058-GA Fort Frederica National Monument General Management Plan, Implementation, Saint Simons Island, Glynn County, GA.

Summary: EPA did not identify any potential environmental impacts.

Dated: November 18, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02-29782 Filed 11-21-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2002-0069; FRL-7280-4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on December 9-11, 2002, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits: Development of proposed AEGLs, continued review of existing AEGLs, comments from the National Academy of Sciences (NAS) Subcommittee for AEGLs, and development of interim AEGLs.

DATES: The meetings will be held from 10 a.m. to 5 p.m. on December 9, 2002; from 8:30 a.m. to 5 p.m. on December 10, 2002; and from 8:30 a.m. to noon on December 11, 2002.

ADDRESSES: The meeting will be held at the Department of Labor, Bureau of Labor Statistics, 2 Massachusetts Ave., NE. (Union Station Metro Stop; 1st St. exit, Visitor's Entrance). Visitors should bring a photo ID for entry into the building and should contact the Designated Federal Officer (DFO) to have their names added to the security entry list.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, DFO, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8557; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2002-0069. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

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

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Meeting Procedures

Chemicals listed under the following categories will be considered, as time permits:

1. Development of proposed AEGLs: Benzene, 1,4-dioxane, hydrogen bromide, sulfur dioxide, and trimethylchlorosilane.

2. Continued review: Allyl amine, chlorine trifluoride, chloromethyl methyl ether, cis- and trans-crotonaldehyde, iron pentacarbonyl, nitric acid, nitric oxide, nitrogen dioxide, perchloromethyl mercaptan, propionitrile, and vinyl chloride.

3. Comments from the NAS Subcommittee for AEGLs: Boron trifluoride, chloroform, dimethyldichlorosilane, methyl trichlorosilane, and toluene.

4. Development of interim AEGLs: Acetonecyanohydrin, ammonia, bromine, fluorine, Jet Fuel 8, methyl ethyl ketone, monochloroacetic acid, phosphorus oxychloride, phosphorus trichloride, and xylenes.

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is tentatively scheduled for March, 2003.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: November 19, 2002.

Allan S. Abramson,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 02-29888 Filed 11-20-02; 2:58 pm]

BILLING CODE 6560-50-S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Interagency Notice of Change in Control; and (2) Asset Purchaser Eligibility.

DATES: Comments must be submitted on or before January 21, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898-7453, Legal Division, Room MB-3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. FAX number (202) 898-3838; Internet address: comments@fdic.gov.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collections of information:*

1. *Title:* Interagency Notice of Change in Control.

OMB Number: 3064-0019.

Form Number: 6822/01.

Frequency of Response: On occasion.
Affected Public: All financial institutions.

Estimated Number of Respondents: 40.

Estimated Time per Response: 30 hours.

Total Annual Burden: 1,200 hours.

General Description of Collection: The Interagency Notice of Change in Control is submitted regarding any person proposing to acquire ownership control of an insured state nonmember bank. The information is used by the FDIC to determine whether the competence, experience, or integrity of any acquiring person, indicates that it would not be in the interest of the depositors of the bank or in the interest of the public, to permit such persons to control the bank.

2. *Title:* Asset Purchaser Eligibility.

OMB Number: 3064-0135.

Frequency of Response: On occasion.
Affected Public: All financial institutions.

Estimated Number of Respondents: 2,500.

Estimated Time per Response: 30 minutes.

Total Annual Burden: 1,250 hours.

General Description of Collection: The Purchaser Eligibility Certification implements the statutory requirement that assets held by the FDIC in the course of liquidating any federally insured institution not be sold to persons who contributed to the demise of an insured institution in specified ways.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC this 19th day of November, 2002.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 02-29767 Filed 11-21-02; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *Putnam Bancorp MHC, Inc., and PSB Holdings, Inc.,* both of Putnam, Connecticut; to become bank holding companies by acquiring 100 percent of the voting shares of Putnam Savings Bank, Putnam, Connecticut.

Board of Governors of the Federal Reserve System, November 18, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-29768 Filed 11-21-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Texas Regional Delaware, Inc.,* Wilmington, Delaware, and Texas Regional Bancshares, Inc., McAllen, Texas; to merge with Corpus Christi Bancshares, Inc., Corpus Christi, Texas, and thereby indirectly acquire CCB-Nevada, Inc., Carson City, Nevada, and The First State Bank, Bishop, Texas.

Board of Governors of the Federal Reserve System, November 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-29831 Filed 11-21-02; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection

Activities: Submission for OMB Review Comment Request

The Department of Health and Human Services, Office of the Secretary 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 are those information collections recently submitted to OMB.

1. *HHS Acquisition Regulations (HHSAR) Part 333: Disputes and Appeals—0990-0133—Extension—The Litigation and Claims clause is needed to inform the government of actions filed against government contracts—* *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions; *Number of respondents:* 80; *Average burden per response:* 30 minutes; *Total annual burden:* 40 hours.

2. *HHS Acquisition Regulations (HHSAR) Part 370: Special Programs Affecting Acquisition—0990-0129—Extension—This section of the regulations establishes requirements for the accessibility of meetings, conferences and seminars to persons with disabilities; establishes requirements for Indian preference in employment, training and subcontracting opportunities—* *Burden Information for Accessibility—Number of Respondents:* 310; *Average Burden per Response:* 10 hours; *Total Accessibility Burden:* 3,100 hours— *Burden Information for Indian Preference—Number of Respondents:* 932; *Average Burden per Response:* 8 hours; *Total Indian Preference Burden:* 7,456 hours— *Total Burden:* 10,566 hours.

3. *HHS Acquisition Regulation (HHSAR) Part 352: Solicitation Provisions and Contract Clauses—0990-0130—Extension—The Key Personnel clause in HHSAR 352.270-5 is necessary for proper contract administration and the Publication and Publicity clause in HHSAR 352.270-6 is*

necessary to encourage publication of contract results.

Respondents: Businesses or other for-profit, non-profit institutions, State, local or Tribal governments— *Burden Information for Key Personnel—Number of Respondents:* 1501; *Average Burden per Response:* 2 hours; *Burden for Key Personnel:* 3002 hours— *Burden Information for Publications—Number of Respondents:* 1,501; *Average Burden per Response:* 2 hours; *Total Burden Key Personnel—3,002 hours—Burden Information on Publication—Number of Respondents:* 420; *Average Burden per Response:* 2 hours; *Total Burden for Publications:* 840 hours— *Total Burden:* 3,842 hours; *OMB Desk Office:* Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690-6207. Written comments 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 Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: November 14, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02-29716 Filed 11-21-02; 8:45 am]

BILLING CODE 4151-17-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations 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 48903-05, 7/26/02. This reorganization is to establish a new chapter AAC, "Office on Disability (OD)" within the Office of the Secretary. The Office on Disability will serve as the focal point within HHS for the implementation and coordination of policies, programs, and special initiatives related to disabilities

within the Department and with other federal agencies. The changes are as follows:

I. Under part A, Office of the Secretary, chapter AA, make the following changes:

A. Under chapter AA, section AA.10 "Organization," add the following new component: Office on Disability (AAC).

B. Under chapter AA, establish a new chapter AAC, "Office on Disability (OD)" to read as follows:

Office on Disability

AAC.00 Mission

AAC.10 Organization

AAC.20 Functions

Section AAC.00 Mission: The Office on Disability (OD) oversees the implementation and coordination of disability programs, policies, and special initiatives. The Office will heighten the interaction of programs within HHS and with federal, state, community and valuable private sector partners. The Office will support plans and initiatives designed to tear down barriers facing people with disabilities, which prevent them from fully participating and contributing in an inclusive community life.

Section AAC.10 Organization: The Office on Disability (OD) is headed by a Director, who reports to the Secretary, and serves as an advisor on HHS activities relating to disabilities.

Section AAC.20 Functions: The Office of Disability (OD) includes the following activities: The OD advises the Secretary on matters relating to implementation and coordination of policies, disability-related programs, and special disability-focused initiatives within the Department and with other federal agencies; and the Office will serve as the focal point within the Department for disabilities issues, including the coordination of disability policy, programs and special disability-related initiatives within the Department and with other Federal agencies. The Deputy Director of the Office on Disability assists the Director in carrying out the responsibilities of the Office and acts as Director in the absence of the Director.

Dated: November 13, 2002.

Ed Sontag,

Assistant Secretary for Administration Management.

[FR Doc. 02-29715 Filed 11-21-02; 8:45 am]

BILLING CODE 4150-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for an Independent Scientist (K02) Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Independent Scientist (K02) Award on Managed Care.

Date: December 2, 2002 (Open on December 2, from 1 p.m. to 1:10 p.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, 4W5, Division of Scientific Review, Rockville, MD 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2121 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594-1846.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the December 2 meeting, due to the time constraints of reviews and funding cycles.

Dated: November 18, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02-29772 Filed 11-21-02; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS-718-721]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services:

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Business Proposal Formats for Quality Improvement Organizations (QIOs)—previously known as Peer Review Organizations and Supporting Regulations in 42 CFR, Section 475.101-475.107; *Form No.:* CMS-718-721 (OMB# 0938-0579); *Use:* The submission of proposal information by current QIOs and other bidders, on the appropriate forms, will satisfy CMS's need for meaningful, consistent, and verifiable data with which to evaluate contract proposals. *Frequency:* tri-annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours:* 455.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at <http://cms.hhs.gov/regulations/pr/default.asp>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willingham, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: November 14, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02-29710 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS-R-70, CMS-2567, CMS-R-107]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to

be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Requirements in HSQ-110, Acquisition, Protection and Disclosure of Peer Review Organization Information and Supporting Regulations in 42 CFR, Sections 480.104, 480.105, 480.116, and 480.134.; *Form No.:* CMS-R-70 (OMB# 0938-0426); *Use:* The Peer Review Improvement Act of 1982 authorizes quality improvement organizations (QIOs), formally known as PROs, to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. These requirements are on the QIOs to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Individuals or Households, and Not-for-profit institutions; *Number of Respondents:* 362; *Total Annual Responses:* 3,729; *Total Annual Hours:* 60,919.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction and Supporting Regulations in 42 CFR 488.18, 488.26, and 488.28; *Form No.:* CMS-2567 (OMB# 0938-0391); *Use:* This Paperwork package provides information regarding the form used by the Medicare, Medicaid, and the Clinical Laboratory Improvement Amendments (CLIA) programs to document a health care facility's compliance or noncompliance (deficiencies) with regard to the Medicare/Medicaid Conditions of Participation and Coverage, the requirements for participation for Skilled Nursing Facilities and Nursing Facilities, and for certification under CLIA. This form becomes the basis for both public disclosure of information and CMS certification decisions (including termination or denial of participation); *Frequency:* Biennially and Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 120,000.

3. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for

which approval has expired; *Title of Information Collection:* Determining Third Party Liability (TPL) State Plan Preprint and Supporting Regulations in 42 CFR 433.138; *Form No.:* CMS-R-107 (OMB# 0938-0502); *Use:* The collection of third party liability information results in significant program savings to the extent that liable third parties can be identified and payments can be made for services that would otherwise be paid for by the Medicaid program. *Frequency:* On occasion; *Affected Public:* Individuals or Households, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 1,900,000; *Total Annual Responses:* 1,900,000; *Total Annual Hours:* 329,965.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://cms.hhs.gov/regulations/pr/default.asp>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 14, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02-29711 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1241-NC]

RIN 0938-AM37

Medicare and Medicaid Programs; Announcement of Applications From Hospitals Requesting Waivers for Organ Procurement Service Areas

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces three applications that we have received from

hospitals requesting waivers from entering into agreements with their designated organ procurement organizations (OPOs), in accordance with section 1138(a)(2) of the Social Security Act. This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant these waivers.

COMMENT DATE: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 2003.

ADDRESSES: In commenting, please refer to file code CMS-1241-NC. Because of staffing 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-1241-NC, PO Box 8010, Baltimore, MD 21244-8010.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-09-26, 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.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mark A. Horney, (410) 786-4554.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., 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, phone (410) 786-9994.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that collect human organs from

hospitals and distribute them to transplant centers around the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to collect organs in CMS-defined exclusive geographic service areas, according to section 371(b)(1)(F) of the Public Health Service Act (42 U.S.C. 273(b)(1)(F)) and our regulations at 42 CFR 486.307. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, according to section 1138(a) of the Social Security Act (the Act), and our regulations at § 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with that particular designated OPO.

However, section 1138(a)(2) of the Act provides that a hospital may obtain a waiver of these requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO, other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the

Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) Is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas (MSAs); and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application within 30 days of receiving the application and offer interested parties an opportunity to comment in writing for 60 days, beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.316(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A-95-11) detailing the waiver process and discussing the information that hospitals must provide in requesting a waiver. We indicated that upon receipt of the waiver requests, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the requests and comments received. During the review process, we may consult on an as-needed basis with the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver requests and notify the affected hospitals and OPOs.

III. Hospital Waiver Requests

As permitted by § 486.316(e), three hospitals have requested waivers in order to enter into agreements with alternative, out-of-area OPOs. The listing below indicates the name of the facility, the city and State of the facility, the requested OPO, and the currently designated area OPO. These hospitals must continue to work with their designated OPOs until the completion of our review.

Name of facility	City	State	Requested OPO	Designated OPO
Pontotoc Health Services	Pontotoc	MS	MSOP	TNMS
Clay County Medical Center	West Point	MS	MSOP	TNMS
luca Hospital	luca	MS	MSOP	TNMS

IV. Keys to the OPO Codes

The keys to the acronyms used in the listings to identify OPOs and their addresses are as follows:

- MSOP—Mississippi Organ Recovery Agency, Inc., 12 River Bend Place, Jackson, Mississippi 39208
- TNMS—Mid-South Transplant Foundation, Inc., 910 Madison Avenue, Suite 1002, Memphis, Tennessee 38103

V. 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 requirement 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 or other forms of information technology.

Section 486.316 sets forth the requirements for a Medicare or

Medicaid participating hospital to request a waiver permitting the hospital to have an agreement with an OPO other than the OPO designated for the service area in which the hospital is located. The burden associated with these requirements is currently approved under OMB 0938-0688, HCFA-R-13, Conditions of Coverage for Organ Procurement Organizations, with an expiration date of February 28, 2003.

VI. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded

Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) 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 in any 1 year). We have determined that this is not a major rule because it does not impose an economically significant impact on covered entities or the Medicare program.

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. Individuals and States are not included in the definition of a small entity. This notice will not result in a significant impact on small businesses because the notice simply announces three applications we have received from hospitals requesting waivers from entering into agreements with their designated OPOs.

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 604 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. This notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

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 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This notice will not result in an impact of \$110 million or more on the governments mentioned or on 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 requirement costs on State and local

governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice under these requirements and have determined that it will not impose substantial direct requirement costs on State or local governments.

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 notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sec. 1138 of the Social Security Act (42 U.S.C. 1320b-8).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; Program No. 93.774, Medicare-Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: November 18, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02-29796 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-2154-FN]

Medicare and Medicaid Programs; Application by the Joint Commission on Accreditation of Healthcare Organizations for Continued Deeming Authority for Ambulatory Surgical Centers

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to re-approve the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) as a national accreditation program for Ambulatory Surgical Centers (ASCs) seeking to participate in the Medicare program. Following our evaluation of the organizational and programmatic capabilities of JCAHO, we have determined that JCAHO standards for ASCs meet or exceed the Medicare conditions for coverage. Therefore, ASCs accredited by JCAHO will receive deemed status under the Medicare program.

EFFECTIVE DATE: This final notice is effective December 20, 2002 through December 20, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786-0310.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC), provided that the ASC meets certain requirements. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) authorizes the Secretary of the Department of Health and Human Services (the Secretary) to establish distinct criteria for facilities seeking designation as ASCs. Under this authority, the Secretary has set forth in regulations minimum requirements that an ASC must meet in order to participate in Medicare. The regulations concerning supplier agreements are at 42 CFR part 489 and those pertaining to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416 specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for facility services.

Generally, in order to enter into an agreement, an ASC must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 416 of our regulations. Then, the ASC is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation that all applicable Medicare conditions are met or exceeded, the Centers for Medicare & Medicaid Services (CMS) shall "deem" those provider entities to have met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the

accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every 6 years or sooner as determined by CMS. The Joint Commission on Accreditation of Healthcare Organization's (JCAHO) current term of approval as a recognized accreditation program for ASCs expires December 19, 2002.

A. Deeming Application Approval Process

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the nature of the request, and provides no less than a 30-day public comment period. At the end of the 210-day period we must publish an approval or denial of the application.

II. Proposed Notice

On June 28, 2002, we published a proposed notice at 67 FR 43612 announcing the JCAHO's request for reapproval as a deeming organization for ASCs. In this notice we detailed our evaluation criteria. Under section 1865(b)(2) of the Act and § 488.4, we conducted a review of the JCAHO application in accordance with the criteria specified by our regulation, which include, but are not limited to the following:

- An onsite administrative review of JCAHO's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors, (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.

- A comparison of JCAHO's ASC accreditation standards to our current Medicare ASC conditions for coverage.

- A documentation review of JCAHO's survey processes to:

- + Determine the composition of the survey team, surveyor qualifications, and the ability of JCAHO to provide continuing surveyor training.

- + Compare JCAHO's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- + Evaluate JCAHO's procedures for monitoring providers or suppliers found to be out of compliance with JCAHO program requirements. The monitoring procedures are used only when the JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).
- + Assess JCAHO's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- + Establish JCAHO's ability to provide us with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of JCAHO's survey process.
- + Determine the adequacy of staff and other resources.
- + Review JCAHO's ability to provide adequate funding for performing required surveys.
- + Confirm JCAHO's policies with respect to whether surveys are announced or unannounced.
- + Obtain JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the proposed notice also solicited public comments regarding whether JCAHO's requirements met or exceeded the Medicare conditions of coverage for ASCs. We received no public comments in response to our proposed notice.

III. Provisions of the Final Notice

A. Differences Between JCAHO and Medicare's Conditions and Survey Requirements

We compared the standards contained in JCAHO's "Comprehensive Accreditation Manual for Ambulatory Care" (CAMAC) and its survey process in the "Ambulatory Surgery Centers Request for Continued Deeming Handbook" with the Medicare ASC conditions for coverage and CMS' State and Regional Operations Manual. Our review and evaluation of JCAHO's deeming application, which were conducted as described in section III of this notice, yielded the following:

- In order to meet the requirements of § 488.4(a)(4)(ii), JCAHO provided the

education and experience requirements surveyors must meet. JCAHO surveyors must have 5 years of recent experience in an appropriate health care setting and a minimum of a Master's degree in an appropriate discipline.

- JCAHO addressed our regulations at § 488.4(a)(4)(v) by providing JCAHO's policy that no one may conduct a survey if they have had a relationship with the facility in the last 3 years. All JCAHO employees are required to sign a conflict-of-interest statement upon hire.

- JCAHO provided a list of all full and partial ASC accreditation surveys scheduled to be performed by the organization in 2002 to satisfy our requirements at § 488.4(a)(10).

- In reference to the CMS final rule published in the **Federal Register** November 13, 2001 (66 FR 56762), the Joint Commission recognized that the exception permitting certified registered nurse anesthetists (CRNAs) to administer anesthesia without supervision of a physician when requested by the Governor of a State, in consultation with the State's Board of Medicine and Nursing was not addressed. JCAHO will reference the role of and supervisory requirements for CRNAs in the next revision of the CAMAC. The crosswalk of the JCAHO standards to the Medicare Conditions will also be amended. JCAHO will also notify current and prospective ASCs seeking deemed status of this revised CMS requirement in JCAHO's official communication vehicle, *Perspectives*, which is published monthly.

- JCAHO recognizes CMS' expectation that an ASC is by definition an ambulatory health care occupancy with or without regard to size of the facility as incorporated in § 416.44(b). JCAHO agrees to survey ASCs seeking deemed status with this requirement and will add language to the CAMAC. In addition, JCAHO will review the application for survey submitted by ASCs to JCAHO and, as appropriate, will make this requirement more prominent to avoid any misunderstandings.

- JCAHO addressed our regulations at § 416.44 by recognizing that assessing compliance with the life safety code (LSC) is a JCAHO responsibility. In the evaluation of the LSC, the JCAHO surveyor physically inspects and evaluates the ASC's physical plant (both above and below the ceiling) in relationship to the requirements of the LSC. As an adjunct survey assessment technique and tool, the JCAHO uses and evaluates the organization's Statement of Condition (SOC) and Plan for Improvement (PFI) during the on-site inspection; however, the SOC/PFI is not

used in lieu of nor does it replace, the on-site evaluation of the ASC's physical plant. In addition, JCAHO strongly supports CMS in the proposed adoption of the 2000 edition of the LSC for all providers. The JCAHO is in the process of adopting the 2000 edition of the LSC for all programs and expects to have this process completed consistent with CMS' adoption of the code.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that JCAHO's requirements for ASCs meet or exceed our requirements. Therefore, we recognize the JCAHO as a national accreditation organization for ASCs that request participation in the Medicare program, effective December 20, 2002 through December 20, 2008.

IV. Collection of Information Requirements

This final notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in 42 CFR part 488, "Survey, Certification, and Enforcement Procedures," are currently approved by OMB under OMB approval number 0938-0690.

V. Regulatory Impact Statement

We have examined the impacts of this final notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final notice recognizes JCAHO as a national accreditation organization for ASCs that request participation in the Medicare program. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. We have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In an effort to better assure the health, safety, and services of beneficiaries in ASCs already certified as well as provide relief to State budgets in this time of tight fiscal restraints, we deem ASCs accredited by JCAHO as meeting our Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

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 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This final notice will not have an effect on the governments mentioned nor on 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 requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final notice will not have a substantial effect on State and local governments. In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the

Office of Management and Budget. In accordance with Executive Order 13132, we have determined that this notice will not significantly affect the rights of States, local, or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare Supplemental Medical Insurance Program)

Dated: November 2, 2002.

Thomas Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02-29363 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-2155-FN]

Medicare and Medicaid Program; Approval of Application for Deeming Authority for Ambulatory Surgical Centers by the Accreditation Association for Ambulatory Health Care

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Accreditation Association for Ambulatory Health Care's (AAAHC) application as a national accrediting organization for ambulatory surgical centers (ASCs) seeking to participate in the Medicare program. Following an evaluation of the organizational and programmatic capabilities of AAAHC, we have determined that AAAHC's standards for ASCs meet or exceed the Medicare conditions for coverage. Therefore, ASCs accredited by AAAHC will be granted deemed status under the Medicare program.

EFFECTIVE DATE: This final notice is effective December 20, 2002, through December 20, 2008.

FOR FURTHER INFORMATION CONTACT: Milonda Mitchell (410) 786-3511.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions and Regulations

Under the Medicare program, eligible beneficiaries may receive covered services in ambulatory surgical centers (ASCs), provided that the ASCs meet

certain requirements. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) authorizes the Secretary of the Department of Health and Human Services (the Secretary) to establish distinct criteria for facilities seeking ASC designation. Under this authority, the Secretary has set forth in regulations minimum requirements that ASCs must meet to participate in Medicare. The regulations at title 42 CFR part 416 (Ambulatory Surgical Services) of the Code of Federal Regulations (CFR) determine the basis and scope of covered services provided by ASCs and Conditions for Medicare payment for ASCs. Applicable regulations concerning provider agreements are at part 489 (Provider Agreements and Supplier Approval) and those pertaining to facility survey and certification are at part 488 (Survey, Certification, and Enforcement Procedures), subparts A (General Provisions) and B (Special Requirements).

B. Verifying Medicare Conditions for Coverage

For an ASC to enter into a provider agreement, a State survey agency must certify that the ambulatory surgical center is in compliance with the conditions or standards set forth in part 416 of CMS regulations. Then, the ASC is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare requirements. However, there is an alternative to State compliance surveys. Certification by a CMS-approved accreditation program can substitute for ongoing State review.

Section 1865(b)(1) of the Act states that provider entities accredited by CMS-approved accrediting organizations are deemed to be in compliance with Medicare conditions for coverage. Accreditation by an accreditation organization is voluntary and is not required of ASCs for participation in Medicare.

C. Deeming Application Approval Process

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that CMS conducts its review of deeming applications in a timely manner. The Act provides CMS with 210 calendar days after the date of receipt of an application to complete its survey activities and application review process. Within 60 days of receiving a completed application, CMS must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the nature of the request, and provides no

less than a 30-day public comment period.

II. Proposed Notice

On June 28, 2002, CMS published a proposed notice announcing AAAHC's request for approval as a deeming organization for ASCs (67 FR 43610). In the notice, CMS detailed its evaluation criteria. Under section 1865(b)(2) of the Act and § 488.4, CMS conducted a review of AAAHC's application in accordance with the criteria specified by CMS regulations, which include, but are not limited to the following:

- An onsite administrative review of AAAHC's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors, (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.

- A comparison of AAAHC's ASC accreditation standards to CMS' current Medicare conditions for coverage.

- A documentation review of AAAHC's survey processes to:

- Determine the composition of the survey team, surveyor qualifications, and the ability of AAAHC to provide continuing surveyor training.

- Compare AAAHC's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

- Evaluate AAAHC's procedures for monitoring providers or suppliers found to be out of compliance with AAAHC program requirements. The monitoring procedures are used only when the AAAHC identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).

- Assess AAAHC's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

- Establish AAAHC's ability to provide CMS with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of AAAHC's survey process.

- Determine the adequacy of staff and other resources.

- Review AAAHC's ability to provide adequate funding for performing required surveys.

- Confirm AAAHC's policies with respect to whether surveys are announced or unannounced.

- Obtain AAAHC's agreement to provide CMS with a copy of the most current accreditation survey together

with any other information related to the survey that CMS may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the proposed notice also solicited public comments regarding whether AAAHC's requirements met or exceeded the Medicare conditions for coverage for ASCs.

CMS received public comments from the American Academy of Facial Plastic and Reconstructive Surgery and the Federated Ambulatory Surgery Association recommending the approval of AAAHC's application as a national accrediting organization for ASCs.

III. Provisions of the Final Notice

A. Differences Between AAAHC and Medicare's Conditions and Survey Requirements

CMS compared the standards contained in AAAHC's "Accreditation Handbook for Ambulatory Health Care," its survey process in the "AAAHC Survey Report Form," and its "AAAHC Environmental Spot-Checklist," with the Medicare ASC conditions for coverage and CMS' State and Regional Operations Manual. CMS conducted its review and evaluation of AAAHC's deeming application as described in section III of this notice. It yielded the following:

- In order to meet the requirements of § 416.41 AAAHC added to its standard that all ASCs must have an effective procedure for transfer to a local hospital, of patients requiring emergency medical care beyond the capabilities of the ASC.

- AAAHC revised its Accreditation Handbook and Survey Report Form to meet the requirement set forth at § 416.44(c), by requiring ventilatory assistance equipment, including airways, manual breathing bags, and ventilators in all ASC operating rooms.

- AAAHC accepted CMS' recommendation to adopt the 2000 Life Safety Code. AAAHC will issue a transmittal of the new LSC requirements to its AAAHC Medicare deemed ASCs, AAAHC surveyors, and to its potential ASCs applicants requesting an AAAHC Medicare deemed status survey. Furthermore, AAAHC has agreed to revise its AAAHC Accreditation Handbook Standards Chapter 8 R-MS, Appendix H; AAAHC Survey Report Form Chapter 8 R-MS; and Physical Environment Checklist for Ambulatory Surgical Centers in February 2003 to reflect the implementation of the 2000 Life Safety Code.

- CMS requested that AAAHC clarify its standard regarding requiring only

existing facilities to conform with existing codes as demonstrated by a fire marshal report performed by a State authority and its standard requiring that an existing facility which lacks a fire marshal report be required to solicit a Life Safety Code Survey from the State fire marshal. AAAHC indicated that it will perform a Life Safety Code survey for all ASCs applying for or re-applying for an AAAHC Medicare deemed status survey. A surveyor credentialed to perform such an inspection performs the AAAHC Life Safety Code survey.

- AAAHC provided clarification to its reference regarding the usage of batteries as an emergency power source by stating that its current requirement is based on the 1985 NFPA Life Safety Code. However, once CMS adopts the 2000 edition of the Life Safety Code, AAAHC agrees that the use of batteries will no longer be an acceptable source of emergency power in an ASC, unless specifically permitted by a CMS exception to the new NFPA standards. In addition, this clarification will be incorporated into the revisions of AAAHC's Physical Environment Spot-Check List for Ambulatory Surgical Centers, Appendix H; AAAHC Survey Report Form, Chapter 8; and the Facilities and Environment Section 18 B of the AAAHC Handbook when published in early 2003. Prior to these revisions, AAAHC will issue a transmittal to all ASCs currently deemed by AAAHC, AAAHC Medicare deemed status surveyors, and to ASCs applying for a AAAHC Medicare deemed status survey stating that in accordance with the 2000 edition of the Life Safety Code all new ambulatory health care facilities with "critical access areas" (including operating rooms and/or post-anesthesia recovery rooms) will be required to provide a "type I" essential electrical system (ESS).

- CMS requested AAAHC to clarify its descriptions of its accreditation decisions for ASCs deemed to participate in the Medicare program. AAAHC responded that its Accreditation Committee awards an ASC accreditation for a three-year term when it has no reservations about the accuracy of the survey findings or the ASC's commitment to continue providing high quality care and services, and when it concludes that the ASC is in compliance with all of Medicare's conditions for coverage all of AAAHC's standards. A one-year term of accreditation is awarded by AAAHC's Accreditation Committee when it concludes that the ASC meets the Medicare conditions for coverage, but that a portion of the ASC's operations

require more time to achieve and sustain compliance with all AAAHC standards. Therefore, the organization would have a special on-site review within 10 months from the first survey date to avoid a lapse in accreditation. Such a special on-site review would be conducted by one or more surveyors and would not be limited to the recommendations in the previous survey report. Finally, AAAHC's Accreditation Committee awards an ASC a six-month term of accreditation when it concludes that the organization meets the Medicare conditions for coverage and is in compliance with the AAAHC standards, but is ineligible for a three-year term of accreditation because the ASC has not been operational for 6 months. However, a six-month term of accreditation may also be awarded to an ASC that has been in business for longer than 6 months, is seeking both AAAHC accreditation and Medicare deemed status for the first time, and AAAHC's Accreditation Committee has determined that it meets the Medicare conditions for coverage and is in compliance with the AAAHC standards. All ASCs with a six-month term of accreditation would have a special on-site review within 5 months from the previous survey date with a focus on the issue of sustained performance since the initial survey. Such a special on-site review would be conducted by one or more surveyors and would not be limited to the recommendations in the previous survey report. CMS deems an ASC accredited by AAAHC for any of these terms to have met or exceeded Medicare standards for the duration of that term.

B. Term of Approval

Based on the review and observations described in section III of this final notice, CMS has determined that AAAHC's requirements for ASCs meet or exceed CMS requirements. Therefore, CMS recognizes AAAHC as a national accreditation organization for ASCs that request participation in the Medicare program, effective December 20, 2002 through December 20, 2008.

IV. Collection of Information Requirements

This final notice does not impose any information collection and recordkeeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in

42 CFR part 488, "Survey, Certification, and Enforcement Procedures," are currently approved by OMB under OMB approval number 0938-0690.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 98-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS considers a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This final notice recognizes AAAHC as a national accreditation organization for ASCs that request participation in the Medicare program. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. CMS has determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, CMS has not prepared analyses for either the RFA or section 1102(b) of the Act.

In an effort to better assure the health, safety, and services of beneficiaries in ASCs already certified as well as provide relief to State budgets in this

time of tight fiscal restraints, CMS deems ASCs accredited by AAAHC as meeting its Medicare requirements. Thus, CMS continues its focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

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 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This final notice will not have an effect on the governments mentioned nor on 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 requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final notice will not have a substantial effect on State and local governments. In accordance with Executive Order 13132, CMS has determined that this notice will not significantly affect the rights of States, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: November 2, 2002.

Thomas Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–29364 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1220–N]

RIN 0938–AL97

Medicare Program; Fee Schedule for Payment of Ambulance Services—Update for CY 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates the Ambulance Inflation Factor (AIF) for ambulance services for calendar year (CY) 2003. The AIF is used in determining the payment limit for ambulance services required by section 1834(l) of the Social Security Act (the Act).

DATES: The AIF for 2003 is effective for ambulance services furnished during the period January 1, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Anne E. Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is \$9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is <http://www.access.gpo.gov/nara/index.html>.

I. Background

Requirements of the Statute for Updating the Ambulance Inflation Factor (AIF) for Ambulance Services for CY 2003

On February 27, 2002, we published a final rule entitled “Medicare Program; Fee Schedule for Payment of Ambulance Services and Revisions to the Physician Certification Requirements for Coverage of Nonemergency Ambulance Services; Final Rule” (HCFA–1002–FC) in the **Federal Register** (67 FR 9100), that established a fee schedule for ambulance services required by section 1834(l) of the Social Security Act (the Act). This final rule provided that the ambulance fee schedule would be updated by the AIF annually, based on the percentage increase in the consumer price index (CPI) for all urban

consumers (U.S. city average) for the 12-month period ending with June of the previous year (§ 414.610(f)). It also provided that notice of the AIF would be published in the **Federal Register** without opportunity for prior comment (§ 414.620). We will follow applicable rulemaking procedures in publishing revisions to the fee schedule for ambulance services that result from any factors other than the inflation factor. In this notice, we set forth the ambulance inflation factor for CY 2003.

II. Provisions of the Notice

Section 1834(l)(3)(B) of the Act provides the basis for updating payment amounts for ambulance services. Specifically, this section provides for an update in payments for CY 2003 that is equal to the percentage increase in the CPI for all urban consumers (CPI–U), for the 12-month period ending with June of the previous year (that is, June 2002). For CY 2003 that percentage is 1.1 percent.

During the transition period, the AIF is applied to both the fee schedule portion of the blended payment amount and to the reasonable charge/cost portion of the blended payment amount separately for each ambulance provider/supplier. Then, these two amounts are added together to determine the total payment amount for each provider/supplier.

III. Waiver of Proposed Rulemaking

We ordinarily publish a proposed notice in the **Federal Register** and provide a period for public comment before we make final the provisions of the notice. We can waive this procedure, however, if we find good cause that notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice issued. We find it unnecessary to undertake notice and comment rulemaking in this instance because the law specifies the method of computation of annual updates, and we have no discretion in this matter. Further, this notice does not change substantive policy, but merely applies the statutorily-specified update method. Therefore, under 5 U.S.C. 553(b)(B), for good cause, we waive notice and comment procedures.

IV. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of

the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This is not considered a major rule because it has an effect on the Medicare program of less than \$100 million in 1 year.

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. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. For purposes of the RFA, all ambulance providers/suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 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. This notice does not apply to small rural hospitals.

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 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This notice does not result in an expenditure in any 1 year by State, local, or tribal governments of \$110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State or local governments.

This notice provides an update for inflation as mandated by statute. We estimate that the total expenditure for CY 2003 for ambulance services covered by the Medicare program is approximately \$3 billion. Inflation of 1.1 percent will result in an additional total expenditure of approximately \$30 million.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 4, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 1, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02-29850 Filed 11-20-02; 10:28 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Notice of Proposed Settlement and Fairness Hearing

The Centers for Medicare and Medicaid Services gives notice that if you are a Medicare beneficiary you may be a member of a class action lawsuit involving local coverage policies. This case challenges, among other things, the notice given when claims are denied by Medicare based on local coverage policies. The United States District Court for the District of Arizona has certified a nationwide class action in this case, *Erringer v. Thompson*, No. CV 01-112 TUC BPV (D. Ariz.), and the parties have submitted a proposed Settlement Agreement to the Court for its approval. You have the right to receive a copy of, and comment on, the proposed settlement Agreement. To receive a copy of the Agreement, please write or email class counsel at one of the addresses listed below. A copy of the proposed Agreement is also available on the Web at: <http://www.acdl.com/legalnews.html>. If you want to comment on the proposed Agreement, you must submit written comments to the Court.

Summary of Agreement

The proposed Agreement settles all claims relating to the initial notice provided to Medicare beneficiaries, whose claims for payment are denied in whole or in part based on application of a Local Medical Review Policy (LMRP) or a Local Coverage Determination (LCD), regarding: (i) the use of such policies in the determination of a beneficiary's claim for benefits, and (ii) the beneficiary's opportunity to provide additional evidence or information in support of his/her claim for benefits. In exchange for Plaintiffs releasing all such claims, Defendant agrees to provide beneficiaries whose claims are denied based on an LMRP or LCD notice that: (1) An LMRP or LCD was used in making the decision to deny their claim; (2) an LMRP or LCD provides a guide to assist in determining whether a particular item or service is covered by Medicare; (3) a copy of the LMRP or LCD is available from the local intermediary or carrier by calling the toll free telephone number listed on the beneficiary's Medicare Summary Notice; (4) the beneficiary can compare the facts in his/her case to the guidelines set out in the LMRP or LCD to see whether additional information from his/her physician might change Medicare's decision; and (5) the beneficiary may also send any additional information regarding any appeal. The Agreement also provides for a way that beneficiaries may receive a copy of the LMRP or LCD used in their case, provides for monitoring of Medicare contractors' compliance with the proposed Agreement's provisions, and provides for a payment of \$23,061 in attorney's fees and costs to Plaintiffs' counsel.

Fairness Hearing

The Court will conduct a fairness hearing before Magistrate Judge Bernardo P. Velasco, at the United States District Court, Evo A. DeConcini U.S. Courthouse, 405 W. Congress Street, Tucson, Arizona 85701, on February 3, 2003, at 9 a.m., to determine whether to approve the proposed Agreement as fair, adequate and reasonable. Objections to the proposed Agreement will be considered by the Court if such objections are filed in writing with the Clerk of Court at the above address, on or before December 31, 2002. Attendance at the hearing is not necessary to have an objection considered; however, class members wishing to be heard orally in opposition to the proposed Agreement should indicate in their written objection their intention to appear at the hearing.

Class Counsel

The attorneys representing the plaintiffs and the class as class counsel are:

Sally Hart, Arizona Center for Disability Law and Center for Medicare Advocacy, Inc., 100 N. Stone Ave., Suite 305, Tucson, AZ 85701. (520) 327-9547. shart@acdl.com.

Dina Lesperance, Arizona Center for Disability Law, 3839 N. Third St., Suite 209, Tucson, AZ 85012-2069.

Gill Deford, Center for Medicare Advocacy, Inc., PO Box 350, Willimantic, CT 06266. (860) 456-7790.

Counsel for Defendant

Counsel for Defendant is:

Ori Lev, United States Department of Justice, PO Box 883, Washington, DC 20044.

Dated: November 5, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02-28873 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare and Medicaid Services****Notice of Proposed Settlement and Fairness Hearing**

We are giving notice that if you are a Medicare beneficiary you may be a member of a class action lawsuit involving local coverage policies. This case challenges, among other things, the notice given when claims are denied by Medicare based on local coverage policies. The United States District Court for the District of Arizona has certified a nationwide class action in this case, *Erringer v. Thompson*, No. CV 01-112 TUC BPV (D. Ariz.), and the parties have submitted a proposed Settlement Agreement to the Court for its approval. You may request a copy of, and comment on, the proposed settlement agreement. To receive a copy of the Agreement, please write or email class counsel at one of the addresses listed below. A copy of the proposed Agreement is also available on the Web at: <http://www.acdl.com/legalnews.html>. If you want to comment on the proposed Agreement, you must submit written comments to the Court.

Summary of Agreement

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(1) An LMRP or LCD was used in making the decision to deny their claim; (2) an LMRP or LCD provides a guide to assist in determining whether a particular item or service is covered by Medicare; (3) a copy of the LMRP or LCD is available from the local intermediary or carrier by calling the toll free telephone number listed on the beneficiary's Medicare Summary Notice; (4) the beneficiary can compare the facts in his/her case to the guidelines set out in the LMRP or LCD to see whether additional information from his/her physician might change Medicare's decision; and (5) the beneficiary may also send any additional information regarding any appeal. The Agreement also provides for a way that beneficiaries may receive a copy of the LMRP or LCD used in their case, provides for monitoring of Medicare contractors' compliance with the proposed Agreement's provisions, and provides for a payment of \$23,061 in attorney's fees and costs to Plaintiffs' counsel.

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Sally Hart, Arizona Center for Disability Law and Center for Medicare Advocacy, Inc., 100 N. Stone Ave., Suite 305, Tucson, AZ 85701, (520) 327-9547, shart@acdl.com.

Dina Lesperance, Arizona Center for Disability Law, 3839 N. Third St., Suite 209, Tucson, AZ 85012-2069.

Gill Deford, Center for Medicare Advocacy, Inc., P.O. Box 350, Willimantic, CT 06266, (860) 456-7790.

Counsel for Defendant

Counsel for Defendant is: Ori Lev, United States Department of Justice, P.O. Box 883, Washington, DC 20044.

Dated: November 6, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02-29128 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services**

[CMS-1217-N]

Medicare Program; December 16, 2002, Meeting of the Practicing Physicians Advisory Council

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. The Council will be meeting to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of the Department of Health and Human Services. This meeting is open to the public.

Meeting Registration: Persons wishing to attend this meeting must contact the meeting coordinator Diana Motsiopoulos at dmotsiopoulos@cms.hhs.gov or (410)-786-3379 at least 72 hours in advance to register. Persons who are not registered in advance will not be permitted into the CMS Headquarters and thus will not be able to attend the

meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

DATES: The meeting is scheduled for Monday, December 16, 2002 from 8:30 a.m. until 5 p.m. e.s.t.

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Website: You may access the Internet at <http://cms.hhs.gov/faca/ppac/default.asp> for additional information and updates on committee activities.

CMS Advisory Committees
Information Line: (1-877-449-5659 toll free)/(410-786-9379 local).

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, M.D., J.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Boulevard., Mail Stop C4-10-07, Baltimore, MD 21244-1850, (410) 786-3379. News media representatives should contact the CMS Press Office, (202) 690-6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation shall occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 of the members of the Council shall be physicians described in section 1861(r)(1) of the Act. The remaining members may include dentists, podiatrists, optometrists, and chiropractors. Members are invited to serve for overlapping 4-year terms contingent upon the renewal of the Council's term. Section 14 of the Federal Advisory Committee Act requires that the 2-year term of advisory committees, such as the Council, be

renewed by appropriate action prior to its termination. Section 1868(a) of the Act provides that appointments for Council membership shall be based upon nominations to the Secretary made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Richard Bronfman, D.P.M.; Ronald Castellanos, M.D.; Rebecca Gaughan, M.D.; Joseph Heyman, M.D.; Stephen A. Imbeau, M.D.; Joe Johnson, D.O.; Christopher Leggett, M.D.; Dale Lervick, O.D.; Angelyn L. Moultrie-Lizana, D.O.; Barbara McAneny, M.D.; Michael T. Rapp, M.D. (Chairman); Amilu Rothhammer, M.D.; Victor Vela, M.D.; and Douglas L. Wood, M.D.

Council members will be updated on the status of recommendations. The agenda will provide for discussion and comment on the following topics:

- Program Integrity Customer Service Initiative.
- Is Immunoassay Fecal Occult Blood Testing an appropriate substitution for Guaiac Fecal Occult Blood Testing in the screening for Colon and Rectal Cancer?
- Educational preparation for February PPAC meeting regarding Physician Fee Schedule.
- Physicians Regulatory Issues Team Update.
- Doctor's Office Quality Project: A Physician Level Measurement and Improvement Initiative.

For additional information and clarification on the topics listed, call the contact person in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, Friday, December 6, 2002, to be scheduled. Testimony is limited to agenda topics. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to the meeting coordinator at dmotsiopoulos@cms.hhs.gov no later than 12 noon, December 6, 2002, for distribution to Council members for review before the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. 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 accommodation should contact Diana Motsiopoulos at dmotsiopoulos@cms.hhs.gov or (410)

786-3379 at least 10 days before the meeting.

(Sec. 1868 of the Social Security Act (42 U.S.C. 1395ee) and sec. 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, sect. 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02-29362 Filed 11-21-02; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 17, 2002, from 12:30 p.m. to 6 p.m. and December 18, 2002, from 8 a.m. to 3:30 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7001, FAX 301-827-6776, e-mail: SomersK@cder.fda.gov, or FDA

Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 17, 2002, the committee will discuss biologics licensing application BL STN 125011/0, BEXXAR, Tositumomab (Anti-B1) and Iodine-131-Tositumomab, Corixa Corp., indicated for the treatment of patients with relapsed or refractory low-grade, follicular or transformed low-grade, B-cell non-Hodgkin's lymphoma (NHL) including patients with rituximab

refractory follicular NHL. On December 18, 2002, the committee will discuss new drug application (NDA) 20-498, S012, CASODEX (150 milligrams bicalutamide), AstraZeneca Pharmaceuticals LP, indicated as: (1) Adjuvant therapy to radical prostatectomy and radiotherapy of curative intent in patients with locally advanced nonmetastatic prostate cancer who have a high risk for disease recurrence, or (2) immediate treatment of localized nonmetastatic prostate cancer in patients for whom therapy of curative intent is not indicated.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 10, 2002. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 1:45 p.m. on December 17, 2002, and between approximately 8:15 a.m. and 8:45 a.m. on December 18, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 10, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by December 10, 2002, to address issues specific to the topic before the committee.

Background materials for this meeting will be posted at the Oncologic Drugs Advisory Committee Dockets Web site at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>. (Click on the year 2002 and scroll down to the Oncologic Drugs Advisory Committee meetings.) The background materials for BEXXAR will be posted on December 16, 2002, and the background materials for CASODEX will be posted on December 17, 2002. The slides and transcripts from the meeting will be posted at this same web address about 3 weeks after the meeting.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to

accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen M. Templeton-Somers at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 15, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02-29689 Filed 11-21-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines (ACCV); Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given of the following meeting. The meeting will be open to the public.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 4, 2002; 9 a.m.–5 p.m.

Place: Audio Conference Call and Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The public can join the meeting in person at the address listed above or by audio conference call by dialing 1-877-960-9066 on December 4 and providing the following information:

Leader's Name: Thomas E. Balbier, Jr.

Password: ACCV.

Agenda: The agenda items for December 4 will include, but not limited to: an update on thimerosal class action lawsuits; a discussion of the revised National Vaccine Injury Compensation Program's Strategic Plan, a presentation on the Institute of Medicine's report, "SV40 Contamination of Polio Vaccine and Cancer," and updates from the Division of Vaccine Injury Compensation, the Department of Justice, and the National Vaccine Program Office. Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 16C-17, 5600 Fishers Lane, Rockville, MD 20857 or by e-mail at cllee@hrsa.gov. Requests should contain the

name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period on the audio conference call. These persons will be allocated time as time permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 16C-17, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-2124 or e-mail: cllee@hrsa.gov.

Dated: November 15, 2002.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 02-29688 Filed 11-21-02; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4739-N-47]

Notice of Proposed Information Collection: Comment Request; Pre-Foreclosure Sales Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: January 21, 2003.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street,

SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or Wayne_Eddins@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Pre-Foreclosure Sales Program.

OMB Control Number, if applicable: 2502-0464.

Description of the need for the information and proposed use: The respondents are homeowners who are attempting to sell their properties prior to foreclosure. The information collection records the process from the borrower's application to participate in the program and the lender's approval, to HUD's review and approval to the specifics of the sale. Homeowners participating in the program must also receive housing counseling, and confirm that counseling has been performed.

Agency form numbers, if applicable: HUD-90035, HUD-90036, HUD-90038, HUD-90041, HUD-90045, HUD-90051, & HUD-90052.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 7,000; the

number of respondents is 23,000 generating approximately 32,000 annual responses; the frequency of response is on occasion, and the estimated time needed to prepare the response varies from three minutes to 30 minutes.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 13, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02-29704 Filed 11-21-02; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4737-N-09]

Notice of Proposed Information Collection for Public Comment: Quality Control for Rental Assistance Subsidy Determinations

AGENCY: Office of Policy Development and Research, 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: *Comment Due Date:* January 21, 2003.

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: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph Riley, 202-708-9426, extension 5861. (This is not a toll-free number.)

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 affected agencies concerning the proposed

collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if 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 that will reduce respondent burden (*e.g.*, permitting electronic submission of responses).

This Notice also provides the following information:

Title of Proposal: Quality Control for Rental Assistance Subsidy Determinations

Description of the Need for Information and Proposed Use: The Department is conducting under contract a study to update its estimate of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.4 million households covered by Public Housing and Section 8 housing subsidies. The QC process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. On-site tenant interviews, file reviews, third-party income verifications, and income matching with other Federal data are conducted. The data obtained are used to identify the most serious problems and their associated costs. HUD programs offices are then responsible for designing and implementing corrective actions. In addition to providing current estimates of error, results will be compared with those from the 2000 study. These comparisons will indicate whether corrective actions initiated since the 2000 study have been effective and if changes in priorities are needed.

The first QC study found that about one-half of the errors measured using on-site tenant interviews and file reviews could not be detected with the 50058/50059 form data collected by the Department, which is why HUD and other agencies with means-tested programs have determined that on-site reviews and interviews are an essential complement to remote monitoring measures. The 2000 study showed that the calculation errors detectable with 50058/50059 data had further decreased, probably because these data

were increasingly subject to automated computational checks.

This study will provide current information on the quality of tenant interviewing (e.g., whether they are they being asked about all sources of income) and the reliability of eligibility determinations and income verifications. It is anticipated successive studies will be done on a one or two year cycle. Legislation that has been approved by the House and the Senate (H.R. 4878) may require annual updates.

Members of the Affected Public: Recipients of Public Housing and Section 8 housing assistance subsidies.

Estimation of the Total Number of Hours Needed With Those Surveyed to Conduct the Information Collection, Including Number of Respondents, Frequency of Response, and Hours of Response: The researchers will survey approximately 400 PHA/program sponsor staff about (re)certification procedures, training, interview procedures, and problems encountered in conducting (re)certifications. Although more than one staff member may need to be contacted to obtain answers to all questions, the questionnaire will be administered once at each participating project and the interviews are expected to take less than 35 minutes. Researchers will survey approximately 2,400 program participants to obtain information on household composition, expenses, and income. The time required for these interviews will vary, but is estimated to require an average of about 50 minutes per interview.

The time estimated provided are based on the 2000 QC survey. This survey will again make use of Computer Assisted Interviewing (CAI) questionnaire and equipment, which are being used in part because they are known to reduce interview times. This software also provides for consistency checks and ensures that all needed data have been collected, thereby reducing the need for follow-up contacts.

Status of the Proposed Information Collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 13, 2002.

Harold L. Bunce,

Deputy Assistant, Secretary for Economic Affairs.

[FR Doc. 02-29707 Filed 11-21-02; 8:45 am]

BILLING CODE 4210-62-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4723-FA-02]

Announcement of Funding Awards for Fiscal Year 2002 Community Outreach Partnership Centers

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2002 Community Outreach Partnership Centers (COPC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to establish and operate Community Outreach Partnership Centers that will: (1) Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and (2) facilitate partnerships and outreach activities between institutions of higher education, local communities and local governments to address urban problems.

FOR FURTHER INFORMATION CONTACT:

Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800-877-8339 or 202-708-1455. (Telephone numbers, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Community Outreach Partnership Centers Program was enacted in the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Community Outreach Partnership Centers Program provides funds for: Research activities which have practical

application for solving specific problems in designated communities and neighborhoods; outreach, technical assistance and information exchange activities which are designed to address specific problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, and community organizing. On March 26, 2002 (67 FR 13927), HUD published a Notice of Funding Availability (NOFA) announcing the availability of \$7.5 million in Fiscal Year 2002 for the Community Outreach Partnership Centers Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded 15 applications for New Grants and 7 applications for New Directions Grants. New Grants, which cannot exceed \$400,000, are for institutions of higher education just beginning a COPC project. New Directions Grants, which cannot exceed \$150,000, are for institutions of higher education that are undertaking new activities or expanding into new neighborhoods. These grants, with their grant amounts are identified below.

The Catalog Federal Domestic Assistance number for this program is 14.511.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 2002 Community Outreach Partnership Center (COPC) Communities Program; Funding Competition, by Institution, Address and Grant Amount

New England

1. North Essex Community College, Ms. Mayte Rivera, Community Institute of Business Educations, North Essex Community College, 45 Franklin Street, Lawrence, MA 01841. Grant: \$399,684.

2. University of Massachusetts-Lowell, Dr. Linda Silka, University of Massachusetts-Lowell, 600 Suffolk Street, Lowell, MA 01854. Grant: \$150,000.

New York/New Jersey

3. Research Foundation of State University of New York at Binghamton, Dr. Alison Alden, School of Education and Human Development, Research Foundation of State University of New York at Binghamton, P.O. Box 6000,

Binghamton, NY 13902-6000. Grant: \$399,997.

4. Rutgers The State University of New Jersey, Maureen Thompson-Siegel, Rutgers The State University of New Jersey, 3 Rutgers Plaza, New Brunswick, NJ 08901. Grant: \$149,999.

Mid-Atlantic

5. Robert Morris University, John Michalenko, Office of Academic and Student Affairs, Robert Morris University, 881 Narrows Run Road, Moon Township, PA 15108. Grant: \$397,841.

6. Virginia Commonwealth University, Dr. Catherine W. Howard, Virginia Commonwealth University P.O. Box 980568, Richmond, VA 23298-0568. Grant: \$149,993.

7. Frostburg State University, Cherie Krug, Center for Volunteerism and National Service, Frostburg State University, 101 Braddock Road, Frostburg, MD 21532. Grant: \$383,709.

Southeast/Caribbean

8. East Carolina University, Al Delia, Regional Development Institute, East Carolina University, 300 East First Street, Willis Building, Greenville, NC 27858. Grant: \$399,950.

9. Morehead State University, Michael W. Hail, Institute for Regional Analysis and Public Policy, Morehead State University, 150 University Boulevard, Morehead, KY 40351. Grant: \$399,999.

10. Vanderbilt University, Debbie Miller, Institute for Public Policy Studies, Vanderbilt University, 512 Kirkland Hall, Nashville, TN 37240. Grant: \$399,920.

11. Mercer University, Dr. Peter C. Brown, Mercer Center for Community Development, Mercer University, 1400 Coleman Avenue, Macon GA 31207. Grant: \$149,996.

Midwest

12. The Regents of the University of Michigan-Dearborn, Dr. Paul Wong, The Regents of the University of Michigan, 3003 South State Street #1038, Ann Arbor, MI 48109-1274. Grant: \$399,814.

13. Northern Illinois University, Katherine Harned, Center for Governmental Studies, Northern Illinois University, Lowden Hall 301, DeKalb, IL 60115-2854. Grant: \$388,280.

14. University of Wisconsin-Milwaukee, Stephen Percy, University of Wisconsin-Milwaukee, P.O. Box 340, Milwaukee, WI 53201-0304. Grant: \$150,000.

Southwest

15. University of Texas Health Science Center at San Antonio, Dr. Bankole Johnson, Southwest Texas

Addiction Research & Technology Center, University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, TX 78229-3900. Grant: \$399,000.

16. University of North Texas, Dr. Stan Ingman, Center for Public Service, University of North Texas, P.O. Box 305250, Denton, TX 76203-5250. Grant: \$150,000.

17. University of Arkansas-Little Rock, Joni Lee, University of Arkansas-Little Rock, 2801 South University, Little Rock, AR 72204. Grant: \$149,386.

Rocky Mountain

18. Colorado State University, Carmen Morales, College of Applied Human Science, Colorado State University, Sponsored Programs, Fort Collins, CO 89523. Grant: \$396,704.

Pacific/Hawaii

19. Claremont Graduate University, School of Educational Studies, 152 Harper Hall, 150 East Tenth Street, Claremont, CA 91711. Grant: \$349,955.

20. San Diego Community College District, Lois C. Bruhm, Economic Development, San Diego Community College District, 3375 Camino del Rio South, San Diego, CA 92118. Grant: \$400,000.

Northwest/Alaska

21. Washington State Community Colleges District 17, Phosetta Rhodes, Spokane Falls Community College, 3410 West Fort George Wright Drive, MS 3010, Spokane, WA 99224. Grant: \$397,246.

22. University of Washington, Louis Fox, Educational Partnerships & Learning Technologies, University of Washington, P.O. Box 352820, Seattle, WA 98195-2820. Grant: \$399,912.

Dated: November 13, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02-29705 Filed 11-21-02; 8:45 am]

BILLING CODE 4210-62-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4723-FA-03]

Announcement of Funding Awards for Fiscal Year 2002 Hispanic-Serving Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2002 Hispanic-Serving Institutions Assisting Communities Program (HSIAC). The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Hispanic-Serving Institutions of Higher Education to expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant program (CDBG).

FOR FURTHER INFORMATION CONTACT:

Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3061, ext. 3852. To provide service for persons who are hearing-or speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800-877-8339 or 202-708-1455. (Telephone numbers, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Hispanic-Serving Institutions Assisting Communities Program was approved by Congress under section 107 of the Community Development Block Grant appropriations for the Fiscal Year 2002, and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HSIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog of Federal Domestic Assistance number for this program is 14.515.

On March 26, 2002 (67 FR 13969), HUD published a Notice of Funding Availability (NOFA) announcing the availability of \$10.1 million in Fiscal Year 2002 for the HSIAC Program. The Department reviewed, evaluated, and scored the applications received based

on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2002 Hispanic-Serving Institutions Assisting Communities Program

Funding Competition, by Institution, Address and Grant Amount

New England

1. North Essex Community College, Ms. Mayte Rivera, Community Institute of Business Educations, North Essex Community College, 45 Franklin Street, Lawrence, MA 01841. Grant: \$278,738.

New York/New Jersey

2. Boricua College, Dr. Victor G. Alicea, Boricua College, 584 Driggs Avenue, Brooklyn, NY 11211. Grant: \$200,109.

Southeast/Caribbean

3. Universidad del Este, Alberto Maldonado-Ruiz, Office of Academic Affairs, Universidad del Este, P.O. Box 2010, Carolina, PR 00984-2010. Grant: \$600,000.

4. Universidad del Turabo, Dr. Dennis Alicea, Universidad del Turabo, P.O. Box 3003, University Station Guarbo, PR 00778-3030. Grant: \$600,000.

Southwest

5. University of Texas at San Antonio, Noe Saldana, University of Texas at San Antonio, 6900 North Loop 1604 West, San Antonio, TX 78249-0603. Grant: \$584,972.

6. University of Texas at Brownsville & Texas Southmost College, Jim Holl, University of Texas at Brownsville & Texas Southmost College, 80 Fort Brown, Brownsville, TX 78520. Grant: \$600,000.

Great Plains

7. Donnelly College, Sue Laird, Donnelly College, 608 North 18th Street, Kansas City, KS 66012. Grant: \$174,462.

Pacific/Hawaii

8. California State University-Northridge, Dr. Warren Furmoto, College of Science & Math, California State University, Northridge, 1811 Nordhoff Street, Northridge, CA 91330-8232. Grant: \$600,000.

9. Gavilian Joint Community College, Rachel Perez, Gavilian Joint Community College, 5055 Santa Teresa Boulevard, Gilroy, CA 95020. Grant: \$599,660.

10. San Bernardino Community College, Larry Fugal, San Bernardino Community College, 114 South Del Rosa Drive, San Bernardino, CA 92408. Grant: \$600,000.

11. Los Angeles Valley College, Dr. Deborah diCesare, Job Training and Economic Development, Los Angeles Valley College, 5800 Fulton Avenue, Valley Glen, CA 91401-4096. Grant: \$599,992.

12. Southwestern College, William Kinney, Higher Education Center National City, Southwestern College, 900 Otay Lakes Road, Chula Vista, CA 91910. Grant: \$594,534.

13. Yosemite Community College, Bennett Tom, Yosemite Community College, P.O. Box 4065, Modesto CA 95352. Grant: \$161,538.

14. West Kern Community College, Jeff Ross, Student Services, West Kern Community College, 29 Emmons Park Drive, Taft CA 93268. Grant: \$492,855.

15. California State University Dominguez Foundation, Dr. Margaret Wallace, California State University Dominguez Foundation, 1000 East Victoria Street, Carson, CA 90747. Grant: \$502,034.

16. West Hills Community College District, Patty Scroggins, Child Development District Office, West Hills Community College, 300 Cherry Lane, Coalinga CA 93210. Grant: \$600,000.

17. Phoenix College, Dr. James Moore, Phoenix College, 1202 West Thomas Road, Phoenix AZ 85013. Grant: \$578,297.

18. University of Arizona Board of Regents, Robert S. Done, University of Arizona Board of Regents, P.O. Box 3308, Tucson AZ 85722-3308. Grant: \$599,350.

Northwest/Alaska

19. Columbia Basin College, Dr. Lee R. Thornton, Columbia Basin College, 2600 North 20th Avenue, Pasco WA 99301-3379. Grant: \$600,000.

Dated: November 13, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02-29706 Filed 11-21-02; 8:45 am]

BILLING CODE 4210-62-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4730-N-47]

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: November 22, 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: November 14, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02-29399 Filed 11-21-02; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office for Equal Opportunity, Office of the Secretary, DOI.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office for Equal Opportunity announces the proposed extension of a public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by January 21, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office for Equal Opportunity, Attn: Samuel Bowser, Department of the Interior, 1849 C St, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Samuel Bowser, (202) 208-5549. The collection instrument is also available on the Internet at: http://www.doi.gov/diversity/doc/di_1935.pdf.

SUPPLEMENTARY INFORMATION: DOI is below parity with the Relevant Civilian Labor Force representation for many mission critical occupations. The Department's Strategic Human Capital Management Plan identifies the job skills that will be needed in our current and future workforce. The job skills we will need are dispersed throughout our eight bureaus and include, among others, making visitors welcome to various facilities, such as parks and refuges, processing permits for a wide variety of uses of the public lands, collecting royalties for minerals extracted from the public lands, rounding-up and adopting-put wild horses and burros found in the west, protecting archaeological and cultural resources of the public lands, and enforcing criminal laws of the United States. As a result of this broad spectrum of duties and services, the Department touches the lives of most Americans.

The people who deal with the Department bring with them a wide variety of backgrounds, cultures, and experiences. A diverse workforce enables the Department to provide a measure of understanding to its customers by relating to the diverse background of those customers. By including employees of all backgrounds, all DOI employees gain a measure of knowledge, background, experience, and comfort in serving all the Department's customers.

In order to determine if there are barriers in our recruitment and selection processes, we must rack the demographic groups that apply for our jobs. There is no other statistically valid method to make these determinations, and no source of this information other than directly from applicants. The data collected is not provided to selecting officials and plays no part in the merit staffing or the selection processes. The data collected will be used in summary form to determine trends covering the demographic make-up of applicant pools and job selections within a given occupation or organizational group. The records of those applicants not selected are destroyed in accordance with the Department's records management process.

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

Title, Associated Form, and OMB Number: Applicant Background Survey, DI form 1935; *OMB Control No.:* 1091-0001.

Needs and Uses: This form is used to obtain the source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

Affected Public: Applicants for DOI jobs.

Annual Burden Hours: 9,960.

Number of Respondents: 120,000.

Responses Per Respondent: 1.

Average Burden Per Response: No more than 5 minutes.

Frequency: 1 per application.

Dated: November 5, 2002.

Samuel Bowser,

*Assistant Director for Workforce Diversity,
Department of the Interior.*

[FR Doc. 02-29766 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before December 23, 2002 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE., 11th Avenue, Portland, Oregon 97232-4181 (fax: 503-231-6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503-231-2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE-039305

Applicant: Michael Klein, San Diego, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*), and take (harass by survey) the coastal California gnatcatcher (*Poliophtila californica californica*) in conjunction with demographic research throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE-017352

Applicant: Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands.

The permittee requests an amendment to take (collect feathers) the Mariana moorhen (*Gallinula chloropus guami*) in conjunction with genetic research within the Northern Mariana Islands for the purpose of enhancing its survival.

Permit No. TE-064212

Applicant: Christine Moen, Temecula, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research in Riverside County, California for the purpose of enhancing its survival.

Permit No. TE-064215

Applicant: Jessika Mejia, Santa Monica, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-064213

Applicant: Ryan Roberts, Irvine, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Dated: November 5, 2002.

Rowan Gould,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 02-29733 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Availability of the Draft Recovery Plan for *Fritillaria gentneri* (Gentner's fritillary) for Review and Comment**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability for public review of the draft recovery plan for *Fritillaria gentneri* (Gentner's fritillary). Gentner's fritillary is restricted to southwestern Oregon, where it is known from scattered localities in the Rogue and Illinois River drainages in Jackson and Josephine Counties. The species is highly localized within a 48-kilometer (30-mile) radius of the Jacksonville Cemetery in Jacksonville, Oregon (the Jacksonville Cemetery harbors one of the largest known *Fritillaria gentneri* populations and serves as a convenient center reference point for the species' range). The majority of known individuals (about 73 percent) occur within an 11-kilometer (7-mile) radius of the Jacksonville Cemetery. *Fritillaria gentneri* has a distribution characterized by several distinct clusters of occurrences, as well as two outlying occurrences in the northeast and southeast corners of its range. We solicit

review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received by January 21, 2003 to receive consideration by us.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Oregon State Office at 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266-1398. If you wish to comment, you may submit your comments and materials concerning this draft revised recovery plan to the Field Supervisor at the address above.

FOR FURTHER INFORMATION CONTACT: Andy Robinson, Fish and Wildlife Biologist, at the address above or at 503-231-6179.

SUPPLEMENTARY INFORMATION:**Background**

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our Endangered Species Program. To help guide the recovery effort, we are working to prepare recovery plans for most listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish recovery criteria for reclassification and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We, along with and other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

Fritillaria gentneri, also known as Gentner's fritillary and Gentner's mission-bells, is a member of the lily family (Liliaceae) with showy, deep red to maroon flowers. *Fritillaria gentneri* is a perennial herb arising from a fleshy bulb. Non-flowering individuals vastly outnumber flowering plants in natural populations, and are recognizable only by their single basal leaves, which appear virtually identical to those of

other co-occurring *Fritillaria* species. Considered a mid-successional species, *Fritillaria gentneri* occupies grassland and chaparral habitats within, or on the edges of, dry, open, mixed-species woodlands at elevations below 1,360 meters (4,450 feet). The species is threatened by a variety of factors including habitat loss associated with rapidly expanding residential and agricultural development, alteration of habitat by invasive weeds and successional encroachment by trees and brush, habitat disturbance from timber harvest and recreational activities, and vulnerability associated with extremely small population sizes. Other potential threats include bulb collecting for gardens, herbivory by deer, and fungal pathogens. Conservation needs include establishing a network of protected populations in natural habitat distributed throughout its native range.

This plan identifies four Recovery zones. Recovery zones are geographically bounded areas containing extant *Fritillaria gentneri* populations that are the focus of recovery actions or tasks. Recovery zones include lands both essential and not essential to the long-term conservation of *Fritillaria gentneri*.

The overall objective of this recovery plan is to reduce the threats to *Fritillaria gentneri* to the point where it can be reclassified to threatened, with the ultimate goal of being removed from the Act's protection entirely.

Recovery of *Fritillaria gentneri* would be contingent upon the following criteria: each recovery zone would maintain at least 750 flowering plants for reclassification to threatened status, 1,000 flowering *Fritillaria gentneri* per zone would be a basis for delisting under the following criteria are met:

(1) To avoid the threat of habitat loss, the reserve areas within the recovery zones identified for recovery should be located on public land, or private land subject to permanent conservation easement or other permanently binding conservation agreements. Because populations elsewhere on public land continue to experience loss and degradation of habitat, each agency involved in land ownership or management in association with reserve areas should take appropriate steps to ensure the long term conservation of this species by outlining their specific responsibilities for site protection and maintenance in land management plans, conservation agreements, and the like.

(2) To remove threats inherent among populations comprised of too few and too widely scattered individuals, 2 of the reserve areas within each recovery zone would have to consist of at least

100 flowering individuals within a 0.8-kilometer (0.5-mile) radius, and exhibit net demographic stability or growth for at least 15 years, as determined through annual demographic monitoring. For the purposes of this plan, measurements of population size and structure are based only on flowering individuals because non-flowering plants cannot be reliably identified to species. If necessary, a reserve area would be subject to augmentation using genetically appropriate cultivated individuals to meet the minimum size criterion. Reserves should contain ample habitat to provide a spatial buffer around each population, and allow room for population migration and expansion over time.

(3) To avoid population vulnerability arising from the inordinate concentration of individuals within a very small area, potentially subject to unpredictable catastrophic events, flowering individuals must be distributed over a minimum of 500 square meters (0.05 hectares or 0.12 acres) of occupied habitat¹ within each recovery area. Thus, reserve populations may have more than the minimum of 1,000 flowering individuals if their distribution, densely confined to a small area, falls short of the occupied habitat requirement.

(4) To maintain favorable habitat conditions, a site-specific habitat management plan would be developed for each reserve area to prevent colonization of invasive weeds and maintain favorable mid-successional characteristics.

(5) To protect plants from bulb collecting and herbivory by deer, each reserve area would be subject to fencing or other measures if annual population monitoring determine the severity of these threats.

(6) To protect plants from fungal disease, each reserve area would be subject to treatment with fungicides or other measures if annual population monitoring to evaluate the severity of the fungal disease threat.

Public Comments Solicited

We solicit written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

¹ "Occupied habitat" is defined based on a vegetation sampling procedure employed by the Service using 1 meter by 1 meter plots that are scored for the presence or absence of *Fritillaria gentneri*. A plot with one or more *Fritillaria gentneri* flowering stems is considered a square meter of occupied habitat.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 30, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02-29734 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Briargate Development, El Paso County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that La Plata Investments, LLC (Applicant) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 as amended (Act). The Service proposes to issue a 30-year permit to the Applicant that would authorize the incidental take of the Preble's meadow jumping mouse (Preble's) (*Zapus hudsonius preblei*), federally-listed as threatened, and loss and modification of its habitat associated with construction of a residential and commercial development in El Paso County, Colorado. Construction of the proposed project will result in the temporary loss of approximately 10.68 hectares (26.38 acres) and the permanent loss of 23.29 hectares (57.55 acres) that provide potential foraging and hibernation habitat for Preble's. The permit application includes a combined Environmental Assessment/Habitat Conservation Plan (Plan), which is available for public review and comment. The Plan fully describes the proposed project and the measures the Applicant will undertake to minimize and mitigate project impacts to Preble's.

The Service requests comments on the Plan for the proposed issuance of an Incidental Take Permit. We provide this notice pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the Plan and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application and Plan should be received on or before December 23, 2002.

ADDRESSES: Comments regarding the permit application or the Plan should be addressed to LeRoy Carlson, Field Supervisor, Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. Comments may be sent by facsimile to (303) 275-2371.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275-2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the Plan and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibits the "take" of a species listed as endangered or threatened, respectively. (Take is defined under the Act, in part, as to harm, or harass a listed species.) However, the Service may issue permits to authorize "incidental take" (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity) of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

The proposed action is the issuance of a permit under section 10(a)(1)(B) of the Act to allow the incidental take of Preble's during the construction of a residential and commercial development at the site. The project will directly affect approximately 33.97 hectares (83.93 acres), of which 10.68 hectares (26.38 acres) are temporary impacts and the remaining 23.29 hectares (57.55 acres) are permanent impacts to potential habitat for Preble's. A Plan has been developed as part of the preferred alternative.

The Preble's is the only federally-listed species that occurs on site and has the potential to be directly affected by the proposed project. The Applicant has agreed to implement the following measures to minimize and mitigate the impacts that may result from project construction:

1. Enhance 4.41 hectares (10.90 acres) of Preble's habitat along the North Fork

of Pine Creek. Enhancement will include transplanting native shrubs from areas of impact to protected habitat, over-seeding of native grasses, and noxious weed control.

2. Restoration of 10.68 hectares (26.38 acres) along the main branch of Pine Creek, and the North and South forks of Pine Creek. Restoration will include the immediate revegetation of the site with native grass seed and clumps of native shrubs.

3. Preservation of 64.13 hectares (158.48 acres) of Preble's habitat by the placement of deed restrictions over the property. This is the result of protecting all remaining Preble's habitat within the project area. An additional 7.75 hectares (19.14 acres) of natural open space adjacent to Preble's habitat also will be protected.

4. Off-site enhancement and restoration of approximately 75 hectares (186 acres) along Kettle Creek, an area known to have a healthy population of Preble's. Enhancement will include transplanting native shrubs from areas of impact to protected habitat, over-seeding of native grasses, and noxious weed control. Existing horse trails along the creek bottom will be restored by stabilizing the immediate area, then seeding with native grass species.

5. Off-site preservation of the 75-hectare (186-acre) Kettle Creek Preserve. Initially the property will be protected by deed restrictions. After that, the deed to the entire property will be turned over to the Trust for Public Lands, who is in the process of forming a new not-for-profit organization to take control of these types of properties and manage them for the sole purpose of endangered species habitat.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, the Plan and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of Preble's. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: November 6, 2002.

John A. Blackenship,

Deputy Regional Director, Denver, Colorado.
[FR Doc. 02-29732 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Great Lakes Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Great Lakes Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The Great Lakes Panel will meet from 10 am to 5 pm on Tuesday, December 10, 2002, and 8 am to 1 pm on Wednesday, December 11, 2002.

ADDRESSES: The Great Lakes Panel meeting will be held at the Holiday Inn, North Campus, 3600 Plymouth Road in Ann Arbor, Michigan. Phone (734) 769-9800.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Shwayder, Project Manager, Great Lakes Commission, at 734-665-9135 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703 358-2308 or by e-mail at: sharon_gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Great Lakes Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Great Lakes Panel, comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests, performs the following activities:

(a) Identifies priorities for the Great Lakes Region with respect to aquatic nuisance species;

(b) Makes recommendations to the Task Force regarding programs to carry out zebra mussel programs;

(c) Assists the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes region;

(d) Coordinates, where possible, aquatic nuisance species program activities in the Great Lakes region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996);

(e) Provides advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

(f) Submits an annual report describing activities within the Great Lakes region related to aquatic nuisance species prevention, research, and control.

Topics to be addressed at this meeting include: an update and a discussion on key provisions of the National Aquatic Invasive Species Act (NAISA) of 2002; a discussion on the Great Lakes Panel's Rapid Response Model Plan; a discussion on the development of Panel priorities through regional coordination; an update on the development of ballast water standards; a review of project and related concerns on Asian carp invasions; and a discussion on the review process for Sea Grant Proposals and the role of regional panels.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203-1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 30, 2002.

Robert J. Batky,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 02-29690 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-952-1430-BX]

Availability of Electronic Records

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the availability of electronic Title Records in Nevada.

EFFECTIVE DATES: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Robert M. Scruggs, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., PO Box 12000, Reno, Nevada 89520, 775-861-6644.

SUPPLEMENTARY INFORMATION: Beginning on November 1, 2002, the Bureau of Land Management's (BLM) Nevada State Office will make available its Master Title Plats, Use Plats, and Historical Indices (Title Records) in an electronic format. At the same time, the BLM will phase out the use of microfiche for these records. This change reflects the BLM's

changeover from a manual to a computer aided drafting process in the maintenance of the Title Records. Until November 1, 2002, Title Records will continue to be available on microfiche, at which time the microfiche will be phased out.

Users of the BLM Nevada's Title Record will continue to have access to these records from any of its Information Access Center locations. BLM offices are located in Reno, Winnemucca, Battle Mountain, Elko, Ely, Tonopah, Caliente, Carson City and Las Vegas.

Users may continue to make printouts of these records for a nominal cost. Cost for each record printed will be in accordance with the BLM's cost recovery charging rates as stated in Manual 1270-2, Cost Recovery, dated June 23, 1994.

Dated: October 2, 2002.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02-29827 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-1430-ET; HAG-03-0010; WAOR-57423]

Proposed Withdrawal and Opportunity for Public Meeting; Washington; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In the Notice of Proposed Withdrawal and Opportunity for Public Meeting, 67 FR 57618, published September 11, 2002, as FR Doc. 02-23040, make the following correction:

On page 57618, in the metes and bounds portion of the legal description, T. 40 N., R. 44 E., Sec. 31, lots 2, 3, 4, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$; , should read T. 40 N., R. 44 E., Sec. 31, lots 2, 3, 4, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 02-29828 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Eastern Planning Area Draft Environmental Impact Statement

AGENCY: Minerals Management Service.

ACTIONS: Notice of availability of the Draft Environmental Impact Statement and public hearings on proposed Eastern Planning Area oil and gas lease sales 189 and 197.

SUMMARY: The U.S. Department of the Interior, Minerals Management Service (MMS) has prepared a draft environmental impact statement (EIS) on two proposed oil and gas lease sales in the Eastern Planning Area (EPA) Outer Continental Shelf (OCS) of the Gulf of Mexico (GOM).

FOR FURTHER INFORMATION CONTACT:

Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Mr. Dennis Chew, telephone (504) 736-2793.

SUPPLEMENTARY INFORMATION: This EIS addresses two proposed Federal actions that offer for lease OCS areas in the EPA of the GOM that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and their projected activities are very similar, a single EIS is being prepared for the two proposed EPA lease sales scheduled in the Outer Continental Shelf Oil and Gas Leasing Program: 2002-2007 (the 5-Year Program). Under the 5-Year Program, proposed lease sale 189 is scheduled for 2003, while proposed lease sale 197 is scheduled for 2005. At the completion of this EIS process, a decision will be made only for proposed lease sale 189. An additional National Environmental Policy Act (NEPA) review will be conducted in the year prior to proposed lease sale 197 to address any new information relevant to that proposed action.

EIS Availability: To find out which libraries along the Gulf of Mexico coast have copies of the draft EIS for review or to obtain single copies of the draft EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123-2394 (1-800-200-GULF). A list of libraries and their locations is also available on the MMS

Internet web site at <http://www.mms.gov>.

Public Hearings: Two public hearings will be held in order to receive comments on the draft EIS: on Wednesday, January 8, 2003, 1 p.m., at the Hampton Inn and Suites, 5150 Mounes Street, Harahan, Louisiana 70123, and Thursday, January 9, 2003, 2 p.m., at the Adams Mark Hotel, 64 South Water Street, Mobile, Alabama. If you wish to testify at a hearing, you may register one hour prior to the meeting. Each hearing will briefly recess when all speakers have had an opportunity to testify. If there are no additional speakers, the meeting will adjourn immediately after the recess. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearings, you may submit written statements until January 24, 2003. Send written statements to the Regional Director (MS 5412), Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394 or to email address: environment@mms.gov.

Dated: November 15, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

Approved:

Dated: November 18, 2002.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02-29769 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 16, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202-343-1836. Written or faxed comments

should be submitted by December 9, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Carroll County

Blue Spring Shelter, Address Restricted, Eureka Springs, 02001596

Craighead County

Stuck, C.A., and Sons Lumber, 215 Union St., Jonesboro, 02001597

Franklin County

Ozark Courthouse Square Historic District, Roughly W. Commercial, W. Main, 2nd and 3rd St., Courthouse Sq., Ozark, 02001599

Perry County

Hollis Country Store, (Arkansas Highway History and Architecture MPS), 2125 AR 7 S, Hollis, 02001598

Pulaski County

Allinder, Bailey, House, 301 Skyline Dr., North Little Rock, 02001600

CONNECTICUT

Hartford County

Grandview Terrace Blvd., Roughly along Grandview Terrace, Hartford, 02001624

IOWA

Humboldt County

Taft, Shephen Harris, House, 809 First Ave. N, Humboldt, 02001601

LOUISIANA

Iberville Parish

Lucky Plantation House, 1295 River Rd., Sunshine, 02001603

Morehouse Parish

Morehouse Parish Courthouse, 125 E. Madison, Bastrop, 02001622

St. Tammany Parish

Johnson House, 402 Lafitte St., Mandeville, 02001602

MARYLAND

Baltimore County

Cantonville Historic District, Old, Bet. Edmondson, Frederick, Melvin and Smithwood Aves., Catonsville, 02001573

Baltimore Independent City

American Ice Company Baltimore Plant No. 2, 330 W. 23rd St., Baltimore (Independent City), 02001589

Baltimore East/South Clifton Park Historic District, Roughly bounded by Clifton Park, N. Broadway, E. Chase St., and N. Rose St. Baltimore (Independent City), 02001611

Holy Cross Roman Catholic Church, 106-112 East West St., Baltimore (Independent City), 02001578

Maryland White Lead Works, 921-979 E. Fort Ave., Baltimore (Independent City), 02001604

National Brewing Company, 3601-3901 Dillon St., Baltimore (Independent City), 02001579

National Enameling and Stamping Company, 1901 Light St., Baltimore (Independent City), 02001583

North Central Historic District, Roughly bounded by North Ave., Greenmount Ave., Falls Rd., and I-83, Baltimore (Independent City), 02001606

Patterson Park—Highlandtown Historic District, Roughly bounded by Patterson Park Ave., E. Fayette St., and Pulaski Hwy, Grundy St., Eastern Ave., Patterson Park, Baltimore (Independent City), 02001623

United States Parcel Post Station, 1501 St. Paul St., Baltimore (Independent City), 02001595

Windsor Hills Historic District, Roughly bounded by Chelsea Terrace, Windsor Mill Rd., Talbot Rd., Westchester Rd., and Woodhaven Ave., Baltimore (Independent City), 02001610

Gunther Brewing Company, 1200, 1211, 1301 S. Conkling St., 3601, 3701 O'Donnell St., E side S. Conkling St., Rear E side of S. Conkling St., Baltimore (Independent City), 02001607

Caroline County

Marble Head, 24435 Marblehead Rd., Ridgely, 02001577

Williston Mill Historic District, 24729 Williston Rd., Denton, 02001576

Carroll County

Hampstead School, 1211 N. Main St., Hampstead, 02001575

Frederick County

Hood College Historic District, 401 Rosemont Ave., Frederick, 02001581

Markell, George, Farmstead, 4825 Buckeystown Pike, Frederick, 02001584

Stonebraker and Harbaugh—Shafer Building, 100-104 W. Main St., Middletown, 02001585

Wolfe, James K.P., House, 1201 Motter Ave., Frederick, 02001582

Harford County

Church of the Holy Trinity, 2929 Level Rd., Churchville, 02001580

Prince George's County

Calvert Hills Historic District, Roughly bounded by Calvert rd., Bowdoin Ave., Erskine Rd., Calvert Park, Albion Rd., and Baltimore Rd., Colledge Park, 02001605

Riverdale Park Historic District, Roughly bounded by Tuckerman St., Taylor Rd., Oglethorpe St., the B&O RR tracks, Madison St. and Baltimore Ave., Riverdale Park, 02001608

West Riverdale Historic District, Roughly bounded by East-West Hwy, 44th Place, the City of Hyattsville and 43rd St., Riverdale Park, 02001609

Somerset County

Maddux House, 9084 Maddox Island Rd., Upper Fairmount, 02001574

Watkins Point Farm, 27737 Phoenix Church Rd., Marion Station, 02001586

Talbot County

Llandaff House, 28472 Old Country Club Rd., Easton, 02001587

Washington County

Fiery, Joseph, House, 15107 Hicksville Rd., Clear Spring, 02001588

Garden Hill, 1251 Frederick St., Hagerstown, 02001590

Good—Reilly House, 107 E. Main St., Sharpsburg, 02001591

Hagerman, William, Farmstead, 7207 Dam #4 Rd., Sharpsburg, 02001592

Highbarger, Jacob, House, 201 W. Main St., Sharpsburg, 02001593

Worcester County

Gunn, Samuel, House, 200 W. Market St., Snow Hill, 02001594

MASSACHUSETTS

Berkshire County

Upper North Street Commercial District, 239-555 North St., 33 Eagle St., Pittsfield, 02001615

Middlesex County

Parker Village Historic District, Concord, Carlisle, Old Lowell, Griffin Rds., Westford, 02001613

Norfolk County

Cohasset Central Cemetery, N. Main St. and Joy Place, Cohasset, 02001612

Wilson, Capt. John, House and Bates Ship Chandlery, 4 Elm St., Cohasset, 02001614

NEW JERSEY

Camden County

Ritz Theatre, 915 White Horse Pike, Haddon, 02001625

NEW YORK

Albany County

Rapp Road Community Historic District, Rapp Rd., Albany, 02001620

New York County

ADMIRAL DEWEY (tugboat), Pier 16, East River, New York, 02001619

OHIO

Lake County

Bedford Baptist Church, 750 Broadway Ave., Bedford, 02001618

VIRGINIA

Richmond Independent City

Tuckahoe Masonic Temple, 319 Maple Ave., Richmond (Independent City), 02001621

WASHINGTON

Chelan County

Cottage Avenue Historic District, 208-509 Cottage Ave., 103 Maple St., 107 Parkhill St., Cashmere, 02001617

Thurston County

Tenino Downtown Historic District, Sussex St. SE, Tenino, 02001616

[FR Doc. 02-29784 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places; Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 9, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202-343-1836. Written or faxed comments should be submitted by December 9, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

FLORIDA**Martin County**

Olympia School, 9141 SE Apollo St., Hobe Sound, 02001534.

Miami-Dade County

US Coast Guard Air Station Hangar at Dinner Key, 2600 S. Bayshore Dr., Miami, 02001535.

Polk County

Lake Hunter Terrace Historic District, Roughly Central Ave., Greenwood St., Ruby St., and Sikes Blvd., Lakeland, 02001536.

INDIANA**Carroll County**

Deer Creek Valley Rural Historic District, SE corner of Sec. 21, most of Sec. 22 and Areas N of Deer Creek, Delphi, 02001557.

Floyd County

East Spring Street Historic District, Roughly bounded by E. 5th, E. Spring, E. 8th, and E. Market Sts., New Albany, 02001566.

Hendricks County

Danville Courthouse Square Historic District, Roughly bounded by Clinton, Tennessee, Broadway, and Cross Sts., Danville, 02001559.

THI and E Interurban Depot—Substation, 401 S. Vine St., Plainfield, 02001562.

Lawrence County

Otis Park and Golf Course, Tunnelton Rd., Bedford, 02001560.
Ragsdale, William A., House, 607 Tunnelton Rd., Bedford, 02001565.

Monroe County

Woolery Stone Company, 2295 W. Tapp Rd., Bloomington, 02001563.

Parke County

Finney, Joseph, House, Cty Rd. 217, Bloomington, 02001564.

Tippecanoe County

Chauncey—Stadium Avenues Historic District, Roughly bounded by Meridian and Lincoln, River Rd., Fowler and Quincy, Northwestern and Allen Sts., West Lafayette, 02001558.

Wabash County

Roann—Paw Paw Township Public Library, 240 S. Chippewa Rd., Roann, 02001561.

IOWA**Black Hawk County**

Black Hawk Hotel, 115–119 Naub St., Cedar Falls, 02001542.

Cerro Gordo County

Hotel Lester—Lester Cafe, 408–410 2nd St. NW, Mason City, 02001543.
Keerl—Decker House, 119 2nd St. SE, Mason City, 02001537.

Dubuque County

Bell, John, Block, 1307–07 Central Ave., Dubuque, 02001540.
Ziepprecht Block, 1347–53 Central Ave., Dubuque, 02001541.

Linn County

Bohemian Commercial Historic District (Cedar Rapids, Iowa MPS), 1000 to 1300 Blks of 3rd St. SE and 100 to 200 Blks of 14ths Ave SE, Cedar Rapids, 02001539.

Taylor County

Lenox Hotel, 114 S. Main St., Lenox, 02001538.

LOUISIANA**Beauregard Parish**

Shady Grove School and Community Building, 2400 LA 26, DeRidder, 02001545.

East Baton Rouge Parish

City Park Golf Course, 1442 City Park Ave., Baton Rouge, 02001546.
Morehouse Parish, Bastrop High School, 715 S. Washington St., Bastrop, 02001544.

MONTANA**Big Horn County**

Moncure Tipi, MT 212, Busby, 02001547.

NEW HAMPSHIRE**Hillsborough County**

Carpenter and Bean Block, 1382–1414 Elm St., Manchester, 02001548.
Smith and Dow Block, 1426–1470 Elm St., Manchester, 02001549.

NEW MEXICO**San Juan County**

Farmington Historic Downtown Commercial District, Approx. 8 blks, along Main St. and Broadway, from Auburn Ave. to Miller Ave., Farmington, 02001551.

Union County

Clayton Public Library (New Deal in New Mexico MPS), 116 Walnut St., Clayton, 02001550.

OHIO**Hocking County**

Inter County Highway 360 (Little Cities of Black Diamonds—Athens, Hocking, Perry Counties MPS), Iles Rd., Logan, 02001552.

PENNSYLVANIA**Philadelphia County**

Suffolk Manor Apartments, 1414–1450 Clearview St., Philadelphia, 02001567

TEXAS**Galveston County**

Cedar Lawn Historic District, Bounded by 45th St., 48th St., Ave. L, and Ave. N, Galveston, 02001570

Sabine County

Toole Building, 202 Main St., Hemphill, 02001568

Tarrant County

Grapevine Commercial Historic District (Boundary Increase II) (Grapevine MPS), 500–530 S. Main St., Grapevine, 02001569

UTAH**Salt Lake County**

McRae, Joseph and Marie N., House, 452 E 500 S, Salt Lake City, 02001555
Ulmer, Frank M. and Susan E., House, 1458 S 1300 E, Salt Lake City, 02001556

Utah County

American Fork Third Ward Meetinghouse (Mormon Church Buildings in Utah MPS), 190 W 300 N, American Fork, 02001554

VERMONT**Windsor County**

White River Junction Historic District (Boundary Increase), N. Main St., S. Main St. Bridge St., Gates St. and Church St., Hartford, 02001553

WEST VIRGINIA**Cabell County**

Chesapeake and Ohio 1308 Steam Locomotive, 1401 Memorial Blvd., Huntington, 02001571

WISCONSIN**Dane County**

Dick, Christian, Block, 106 E. Doty St., Madison, 02001572

A request for removal has been made for the following resources:

MISSISSIPPI**Warren County**

Confederate Avenue Steel Arch Bridge (Historic Bridges of Mississippi TR), Spans Jackson Rd. In Vicksburg National Military Park, Vicksburg, 88002483

SOUTH DAKOTA**Fall River County**

Edgemont Block, 610 2nd Ave., Edgemont,
96001232

[FR Doc. 02-29785 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places;
Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 2, 2002.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202-343-1836. Written or faxed comments should be submitted by December 9, 2002.

Beth L. Savage,

*Acting Keeper of the National Register of
Historic Places.*

DELAWARE**Kent County**

St. Joseph's Industrial School, 355 W. Duck
Creek Rd., Clayton, 02001491

GEORGIA**DeKalb County**

Blair—Rutland Building, 215 Church St.,
Decatur, 02001492

Pickens County

Tate Gymnasium, 5600 GA 53 E, Tate,
02001493

INDIANA**Allen County**

Smith Field, 426 W. Ludwig Rd., Fort Wayne,
02001495

MICHIGAN**Berrien County**

South Berrien Center Uion Church and
Cemetery, 10408 M-140, Berrien,
02001506

Jackson County

Michigan Central Railroad Jackson Depot,
501 E. Michigan Ave., Jackson, 02001504

Oakland County

Albertson, Eli and Sidney Teeter, House,
4480 Sheldon Rd., Oakland Township,
02001505

Otsego County

Kramer, Frank A. and Rae E. Harris, House,
221 N. Center Ave., Gaylord, 02001507

Wayne County

West Vernor—Junction Historic District
(West Vernor Highway Survey Area,
Detroit, Michigan MPS), W. Vernor Hwy.,
bet., Lansing and Cavalry, Detroit,
02001503

West Vernor—Lawndale Historic District
(West Vernor Highway Survey Area,
Detroit, Michigan MPS), W. Vernor Hwy.,
bet. Cabot and Ferris, Detroit, 02001501

West Vernor—Springwells Historic District
(West Vernor Highway Survey Area,
Detroit, Michigan MPS), W. Vernor Hwy,
vet. Honorah and Norman, Detroit,
02001502

MISSISSIPPI**Bolivar County**

Adath Israel Temple, 301 S. Bolivar Ave.,
Cleveland, 02001499

Jackson County

Bellevue, 3401 Beach Blvd., Pascagoula,
02001498

Kemper County

Zion Baptist Church, Little Zion Church Rd.
W, 2 mi. N of Lauderdale/Kemper County
Line, Collinsville, 02001497

MISSOURI**St. Louis Independent City**

Brown, Paul, Building, 818 Olive St., St.
Louis (Independent City), 02001496
Taylor—Olive Building, 4505 Olive St., St.
Louis (Independent City), 02001494

NEW HAMPSHIRE**Cheshire County**

Troy Village Historic District, Encompassing
the village center, mostly along NH 12,
Troy, 02001500

NEW JERSEY**Hunterdon County**

Frog Hollow Road Bridge over minor
tributary of the South Branch, Raritan
River (Bridges of Tewksbury Township
MPS), Frog Hollow Rd., approx. 1400' W of
Beavers Rd., Tewksbury, 02001509

Hollow Brook Road Bridge over tributary of
the Lamington River (Bridges of Tewksbury
Township MPS), Hollow Brook Rd. approx.
700' W of Homestead Rd., Tewksbury,
02001510

Palatine Road Bridge over a minor tributary
of the Lamington River (Bridges of
Tewksbury Township MPS), Palatine Rd.,
jct. with Homestead and Cold Spring Rds.,
Tewksbury, 02001508

Ocean County

Little Egg Harbor Friends Meeting House, 21
E. Main St., Tuckerton, 02001511

OHIO**Summit County**

Warwick Interlocking Tower (Canal,
Railroad, and Industrial Resources of the
Village of Clinton/Warwick, Ohio MPS),
2955 S 1st. St., Clinton, 02001516

TENNESSEE**Shelby County**

High Point Terrace Historic District
(Residential Resources of Memphis MPS),
Bounded by Highland, Eastland and Swan
Ridge Circle, Walnut Grove and Sam
Cooper, Memphis, 02001513

TEXAS**Liberty County**

Liberty County Courthouse, 1923 Sam
Houston Blvd., Liberty, 02001514

Tarrant County

Fort Worth High School, 1015 S. Jennings
Ave., Fort Worth, 02001515
Hogg, Alexander, School, 900 St. Louis Ave.,
Fort Worth, 02001512

VIRGINIA**Prince William County**

Cabin Branch Pyrite Mine Historic District,
Prince William Forest Park, Triangle,
02001517

WEST VIRGINIA**Berkeley County**

Hedges Chapel, 668 Mountain Lake Rd.,
Hedgesville, 02001520
Martinsburg, Mining, Manufacturing &
Improvement Co. Historic District, NY, VA,
WV, MD, FL and Faulkner, Martinsburg,
02001519

Ropp, Baker, House, 2301 Harlan Spring Rd.,
Martinsburg, 02001522

Ropp, R.C., House, 2199 Harlan Spring Rd.,
Martinsburg, 02001523

Rosemont Historic District, Tennessee,
Illinois, Georgia, Kentucky Aves.,
Martinsburg, 02001524

Speck, Peter, House, 1149 Ben Speck Rd.,
Martinsburg, 02001526

Turner, Priscilla Strode, House, 347 Carlyle
Rd., Beddington, 02001527

Cabell County

Rotary Park Bridge, Rotary Park, 31 St. and
Rotary Dr., Huntington, 02001525

Hancock County

Hellings, Nathan, Apple Barn, WV 2, Newell,
02001529

Waterford Park, WV 2, Newell, 02001528

Marshall County

Cockayne, Bennett, House, 1111 Wheeling
Ave., Glen Dale, 02001521

Ohio County

Wheeling Warehouse Historic District,
Roughly along Main St., Water St., 21 St.,
22nd St., South St., 18th St., Eoff St. and
Chapline St., Wheeling, 02001530

Wayne County

Camp Mad Anthony Wayne, 2125 Spring
Valley Dr., Huntington, 02001531

WISCONSIN**Dane County**

College Hills Historic District, Roughly bounded by Colombia Rd., Amherst Dr., Bowdoin Rd., Corporate Limit, University Bay, and Harvard Dr., Shorewood Hills, 02001518

A request for a move has been received for the following resource:

WISCONSIN**Dane County**

Lie Aslak Cabin, 3022 County Trunk P, Mount Hoeb, 86000622

A request for removal has been received for the following resource:

TENNESSEE**Davidson County**

DuPont Fire Hall, (Old Hickory MRA), Old Hickory, 85001558

[FR Doc. 02-29786 Filed 11-21-02; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-471]

Notice of Commission Decision Not To Review an Initial Determination Granting Complainant EMC Corporation's Motion To Terminate the Investigation as to Certain Claims and To Amend the Complaint and Notice of Investigation by Adding Two Claims

In the matter of: certain data storage systems and components thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting complainant EMC Corporation's motion to terminate the investigation as to certain claims and to amend the complaint and notice of investigation by adding two claims.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone (202)

205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. General information concerning the Commission may also 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>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 9, 2002, based on a complaint filed by EMC Corporation of Hopkinton, Massachusetts ("EMC"), against Hitachi, Ltd. of Tokyo, Japan, and Hitachi Data Systems Corporation of Santa Clara, California. 67 FR 34472 (2002). The complaint alleges violations of section 337 in the importation and sale of certain data storage systems or components thereof by reason of infringement of certain claims of complainant's U.S. Patent Nos. 5,742,792; 5,544,347; 6,092,066; 6,101,497; 6,108,748; and 5,909,692.

On September 20, 2002, EMC filed a motion to terminate the investigation as to a total of 64 claims and to amend the complaint and notice of investigation by adding two claims. On October 4, 2002, respondents filed a response in which they stated that they did not oppose EMC's motion. Also on October 4, 2002, the Commission's investigative attorney filed a response in support of the EMC's motion. On October 8, 2002, the ALJ issued an ID granting complainant's motion. No party filed a petition for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

By order of the Commission.

Issued: November 18, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02-29759 Filed 11-21-02; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE**Federal Bureau of Investigation**

Agency Information Collection Activities: Reinstatement, With Change; Comment Request

Action: 60-Day Notice of Information Collection Under Review: Reinstatement, with change, of a

previously approved collection for which approval has expired; Postgraduate Evaluation of the FBI National Academy and FBI National Academy Training Needs Assessment For Agency Executives.

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until January 21, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions or need a copy of the proposed information collection instrument with instructions or additional information, please contact Paul Laskiewicz, FBI Academy, Quantico, Va. 22135.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Postgraduate Evaluation of the FBI National Academy and FBI National Academy Training Needs Assessment For Agency Executives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Federal Bureau of Investigation, FBI Academy.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Officers. Other: None. Abstract: This survey will consist of the following two instruments: Post Graduate Evaluation of the FBI National Academy and FBI National Academy Training Needs Assessment For Agency Executives. These are surveys to collect training related information and there are no sensitive or personal questions, therefore confidentiality is not guaranteed or necessary.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 3700 respondents who will each require an average of 15 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden for this information collected is estimated to be 925 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, Untied States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street NW., Washington DC 2004.

Dated: November 19, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02-29780 Filed 11-21-02; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of October and November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility

requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-41,368; Komtek, Worcester, MA

TA-W-41,075; Altec Industries, Inc., Plains, PA

TA-W-41,451; Powerex, Inc., Youngwood, PA

TA-W-42,272; Mountain Fir Chip Co.,

Main Office, Salem, OR A; The Dalles Div., The Dalles, OR, B;

Lewiston Div., Lewiston, ID C;

Wilma Div., Clarkston, WA

TA-W-42,078; Americal Corp., Goldsboro, NC

TA-W-42,170; FMC Corp., Active Oxidants Div., Tonawanda, NY

TA-W-42,207A; Xerox Corp., Small Office/Home Office Div. (SOHO), Webster, NY

TA-W-42,247; Tecmotiv Manufacturing Corp., a Subsidiary of Tecmotiv (USA), Inc., Tonawanda, NY

TA-W-42,166; Best Manufacturing, Johnson City Div., Johnson City, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-42,046; B-W Specialty Manufacturing, Seattle, WA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-42,512A; Maintenance and Industrial Services, Greenville, SC

TA-W-42,152; Pringle Power-Vac, Inc., Walla Walla, WA

TA-W-42,130; Volt Services Group, Hewlett-Packard, Vancouver, WA

The investigation revealed that criteria (1) has not been met. A

Significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA-W-42,260; Miss Dorby, Div. of Dorby Frocks, New York, NY

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-42,250; E.J. Snyder and Co., Inc., Albermarle, NC

TA-W-42,191; Tytex, Inc., USA, Woonsocket, RI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-41,512; Pillowtex Corp., Weave Plant and Finishing Plant Phenix City, AL: April 3, 2001.

TA-W-41,848; Jam'ng Five, Medley, FL: June 25, 2001.

TA-W-42,115; Federal-Mogul Corp., Lighting Div., Sevierville, TN: August 30, 2001

TA-W-42,123; Coleman Cable, Inc., El Paso, TX: August 27, 2001.

TA-W-42,174; Sterling Fibers, Inc., Pace, FL: September 17, 2001.

TA-W-42,259; Colabria Fashions, Inc., New Rochelle, NY: October 11, 2001.

TA-W-42,267; Simula Automotive Safety Devices, Inc., Tempe, AZ: September 20, 2001.

TA-W-42,073; Wilson Sporting Goods Compant, Golf Club Div., Tullahoma, TN: August 15, 2001.

TA-W-42,285; GE Motors Operation, Murfreesboro, TN: October 21, 2001.

TA-W-42,300; Lake Village Industries, a Subsidiary of Superior Uniform Group, Inc., Lake Village, AR: October 10, 2001.

TA-W-42,244; X-Cell Tool and Die, Inc., Erie, PA: September 23, 2001.

TA-W-42,221; Marconi Communications, Network Components, Lorain, OH and A; Avon, OH, B; Elyria, OH: September 3, 2001.

TA-W-42,216 & A; Alba-Waldensian, Inc., Pineburr Plant/Research and Development, Valdese, NC and Corporate Office, Valdese, NC: August 23, 2001.

TA-W-42,210; Presto Products Manufacturing Co., Alamogordo, NM: September 19, 2001.

TA-W-42,109; Ansell Healthcare Products, Inc., Troy, AL: September 6, 2001.

TA-W-42,096; Ralph Lauren Womenswear, Inc., Carlstadt, NJ: August 26, 2001.

TA-W-42,092; JTM Group, Inc., Jamestown, NY: August 11, 2001.

TA-W-42,072; Federal-Mogul Corp (Including Temporary Workers from Mictotech, Inc., Waltham, MA), Brighton, MA: August 21, 2002.

TA-W-42,064; SMTC Manufacturing Corp., Austin, TX: August 16, 2001.

TA-W-41,961; Gilman Engineering and Manufacturing Co., LLC, Janesville, WI: July 20, 2001.

TA-W-41,948; Buck Forkardt, Inc., Kalamazoo, MI: July 24, 2001.

TA-W-41,770; RFS Ecusta, Pisgah Forest, NC: May 21, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the months of October and November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-06372; Jam'ng Five, Medley, FL

NAFTA-TAA-07580; JTM Group, Inc., Jamestown, NY

NAFTA-TAA-07610; Mountain Fir Chip Co., Main Office, Salem, OR, A; The Dalles Div., The Dalles, OR, B; Lewiston Div., Lewiston, ID, C;

Wilma Div., Clarkston, WA
NAFTA-TAA-07617; Tecmotiv Manufacturing Corp., a Subsidiary of Tecmotiv (USA), Inc., Tonawanda, NY

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA-TAA-07561; Comair Rotron, Inc., San Diego, CA

NAFTA-TAA-07601; Panapage Co., Inc. d/b/a/ Panavision Chicago, Chicago, IL

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA-TAA-07243; State of Alaska Commercial Fisheries Entry Commission Permit #64891C, King Salmon, AK

NAFTA-TAA-07310; State of Alaska Commercial Fisheries Entry Commission Permit #64922S, Manokotak, AK

NAFTA-TAA-07197; State of Alaska Commercial Fisheries Entry Commission Permit #64699Z, Dillingham, AK

NAFTA-TAA-07196; State of Alaska Commercial Fisheries Entry Commission Permit #61256Z, Dillingham, AK

NAFTA-TAA-07185; State of Alaska Commercial Fisheries Entry Commission Permit #S04T64806J, Dillingham, AK

NAFTA-TAA-07138; State of Alaska Commercial Fisheries Entry

Commission Permit #56023B, Dillingham, AK

NAFTA-TAA-07071; State of Alaska Commercial Fisheries Entry Commission Permit #64825K, Togiak, AK

NAFTA-TAA-07069; State of Alaska Commercial Fisheries Entry Commission Permit #55947S, Togiak, AK

NAFTA-TAA-07050; State of Alaska Commercial Fisheries Entry Commission Permit #59350N, Togiak, AK

NAFTA-TAA-07049; State of Alaska Commercial Fisheries Entry Commission Permit #57680K, Togiak, AK

NAFTA-TAA-07011; State of Alaska Commercial Fisheries Entry Commission Permit #50141A, Togiak, AK

NAFTA-TAA-06998; State of Alaska Commercial Fisheries Entry Commission Permit #66428A, Togiak, AK

NAFTA-TAA-06993; State of Alaska Commercial Fisheries Entry Commission Permit #61322R, South Naknek, AK

NAFTA-TAA-06989; State of Alaska Commercial Fisheries Entry Commission Permit #55824M, South Naknek, AK

NAFTA-TAA-06992; State of Alaska Commercial Fisheries Entry Commission Permit #58847H, South Naknek, AK

NAFTA-TAA-06988; State of Alaska Commercial Fisheries Entry Commission Permit #60847U, South Naknek, AK

NAFTA-TAA-06983; State of Alaska Commercial Fisheries Entry Commission Permit #64247N, South Naknek, AK

NAFTA-TAA-06933; State of Alaska Commercial Fisheries Entry Commission Permit #58614S, New Stuyahok, AK

NAFTA-TAA-06916; State of Alaska Commercial Fisheries Entry Commission Permit #56222Z, New Stuyahok, AK

NAFTA-TAA-07444; State of Alaska Commercial Fisheries Entry Commission Permit #57783X, South Naknek, AK

NAFTA-TAA-07447; State of Alaska Commercial Fisheries Entry Commission Permit #58751S, South Naknek, AK

NAFTA-TAA-07452; State of Alaska Commercial Fisheries Entry Commission Permit #56213V, South Naknek, AK

NAFTA-TAA-07454; State of Alaska Commercial Fisheries Entry Commission Permit #65820Z, South Naknek, AK

NAFTA-TAA-07473; *State of Alaska Commercial Fisheries Entry Commission Permit #65633H, South Naknek, AK*

NAFTA-TAA-07479; *State of Alaska Commercial Fisheries Entry Commission Permit #68318S, Togiak, AK*

NAFTA-TAA-07498; *State of Alaska Commercial Fisheries Entry Commission Permit #59702V, Togiak, AK*

NAFTA-TAA-07500; *State of Alaska Commercial Fisheries Entry Commission Permit #64943H, Togiak, AK*

NAFTA-TAA-06907; *State of Alaska Commercial Fisheries Entry Commission Permit #60305A, Naknek, AK*

NAFTA-TAA-06556; *State of Alaska Commercial Fisheries Entry Commission Permit #59347M, Aleknagik, AK*

NAFTA-TAA-06592; *State of Alaska Commercial Fisheries Entry Commission Permit #57392Q, Dillingham, AK*

NAFTA-TAA-06596; *State of Alaska Commercial Fisheries Entry Commission Permit #66427I, Dillingham, AK*

NAFTA-TAA-06674; *State of Alaska Commercial Fisheries Entry Commission Permit #64887H, Dillingham, AK*

NAFTA-TAA-06824; *State of Alaska Commercial Fisheries Entry Commission Permit #56509B, Hevelock, AK*

NAFTA-TAA-06867; *State of Alaska Commercial Fisheries Entry Commission Permit #67004Z, Naknek, AK*

NAFTA-TAA-06069; *Permit #61913O, Manokotak, AK*

NAFTA-TAA-07450; *Permit #59803W, South Naknek, AK*

NAFTA-TAA-07429; *Permit #58385W, Pilot Point, AK*

NAFTA-TAA-07449; *Permit #58296E, South Naknek, AK*

NAFTA-TAA-06560; *Permit #61977V, Clarks Point, AK*

NAFTA-TAA-06590; *Permit #59590W, New Stuyahok, AK*

NAFTA-TAA-06758; *Permit #56087G, Ekwo, AK*

NAFTA-TAA-06794; *Permit #67507U, King Salmon, AK*

NAFTA-TAA-06890; *Permit #56569N, Anchorage, AK*

NAFTA-TAA-06888; *Permit #61249B, Naknek, AK*

NAFTA-TAA-06931; *Permit #57641L, New Stuyahok, AK*

NAFTA-TAA-06953; *Permit #62030E, Pilot Point, AK*

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-06482; *Farley's and Sathers Candy Co., Inc., Oklahoma City Plant, Oklahoma City, OK: August 12, 2001.*

NAFTA-TAA-06505; *Hudson RCI, Temecula, CA: August 9, 2001.*

NAFTA-TAA-06483; *Federal-Mogul Corp., (Including Temporary Workers from Microtech, Inc., Waltham, MA), Brighton, MA: August 21, 2001.*

NAFTA-TAA-06509; *Dana Corp., Perfect Circle Div., Hastings, NE: August 23, 2001.*

NAFTA-TAA-06855; *Permit #651913O, New Stuyahok, AK: September 5, 2001.*

NAFTA-TAA-06997; *Permit #59196Q, Togiak, AK: September 5, 2001.*

NAFTA-TAA-07258; *Permit #60363F, King Salmon, AK: September 5, 2001.*

NAFTA-TAA-07300; *Permit #60027H, Manokotak, AK: September 5, 2001.*

NAFTA-TAA-07555; *Federal-Mogul Corp., Lighting Div., Sevierville, TN: August 30, 2001.*

NAFTA-TAA-07579 A & B; *Marconi Communications, Network Components, Lorain, OH, Avon, OH and Elyria, OH: September 30, 2001.*

NAFTA-TAA-06505; *Hudson RCI, Temecula, CA: August 9, 2001.*

NAFTA-TAA-06201; *Topsail Electronics, Inc., Wendell, NC: May 14, 2001.*

NAFTA-TAA-06334; *Nortel Networks Corp., Billerica, MA: July 1, 2001.*

NAFTA-TAA-06421; *Buck Forkardt, Inc., Kalamazoo, MI: July 24, 2001.*

NAFTA-TAA-06623; *State of Alaska Commercial Fisheries Entry Commission Permit #61948U, Dillingham, AK: September 5, 2001.*

NAFTA-TAA-06807; *State of Alaska Commercial Fisheries Entry Commission Permit #55325L, Koliganek, AK: September 5, 2001.*

NAFTA-TAA-06847; *State of Alaska Commercial Fisheries Entry Commission Permit #58402S, Manokotak, AK: September 5, 2001.*

NAFTA-TAA-06939; *State of Alaska Commercial Fisheries Entry Commission Permit #63406X, New Stuyahok, AK: September 5, 2001.*

NAFTA-TAA-07009; *Bristol Bay Salmon Fishermen State of Alaska Commercial Fisheries Entry Commission Permit #58110G, Togiak, AK: September 5, 2001.*

NAFTA-TAA-07107; *State of Alaska Commercial Fisheries Entry Commission Permit #59800U, Dillingham, AK: September 5, 2001.*

I hereby certify that the aforementioned determinations were

issued during the months of October and November, 2002. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 12, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02-29701 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-42,342]

Auburn Hosiery Mills, Inc., a Division of the Kellwood Company, Auburn, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002 in response to a worker petition, which was filed by a company official on behalf of workers at Auburn Hosiery Mills, Inc., a division of the Kellwood Company, Auburn, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02-29698 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-40,525F]

The Boeing Company, Boeing Irving Company, Boeing Electronics Irving Company, Commercial Airplane Group, Irving, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued an Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 18, 2002,

applicable to workers of The Boeing Company, Commercial Airplane Group, Irving, Texas. The notice was published in the **Federal Register** on July 29, 2002 (67 FR 49039-49040).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of large commercial aircraft and the components thereof.

New information shows that workers separated from employment at the Irving, Texas, location of the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Boeing Irving Company and Boeing Electronics Irving Company.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of The Boeing Company, Commercial Airplane Group, Irving, Texas, who were adversely affected by increased imports.

The amended notice applicable to TA-W-40,525F is hereby issued as follows:

All workers of The Boeing Company, Boeing Irving Company, Boeing Electronics Irving Company, Commercial Airplane Group, Irving, Texas (TA-W-40,525F) who became totally or partially separated from employment on or after February 25, 2002, through March 18, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 21st day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02-29694 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-41,379 and TA-W-41,379A]

Williamson Dickie Manufacturing Company, McAllen #9, McAllen, TX, and Williamson Dickie Manufacturing Company, Weslaco, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 2, 2002, applicable to workers of Williamson Dickie Manufacturing Company,

McAllen #9, McAllen, Texas. The notice was published in the **Federal Register** on July 18, 2002 (67 FR 47400).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Weslaco, Texas location of Williamson Dickie Manufacturing Company when the plant closed permanently in September, 2002. The workers were engaged in employment related to the production of men's work pants.

Accordingly, the Department is amending the certification to cover workers of Williamson Dickie Manufacturing Company, Weslaco, Texas.

The intent of the Department's certification is to include all workers of Williamson Dickie Manufacturing Company who were adversely affected by increased imports.

The amended notice applicable to TA-W-41,379 is hereby issued as follows:

All workers of Williamson Dickie Manufacturing Company, McAllen #9, McAllen, Texas (TA-W-41,379) and Williamson Dickie Manufacturing Company, Weslaco, Texas (TA-W-41,379A) who became totally or partially separated from employment on or after April 9, 2001, through July 2, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 4th day of October, 2002.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02-29696 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA-6554; Permit # 55348J; Aleknagik, Alaska]

Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit # 55348J, Aleknagik, Alaska.

The workers stopped fishing in July 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02-29700 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-41,467]

I.C. Isaacs & Co., Inc., New York, NY; Notice of Revised Determination on Reconsideration

By application of August 1, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination, based on the finding that the workers of I.C. Isaacs & Co., Incorporated did not produce jeans, t-shirts and men's polo shirts during the relevant period. The denial notice was signed on June 25, 2002 and published in the **Federal Register** on July 9, 2002 (67 FR 455501).

The company on reconsideration provided additional information concerning the functions performed by the subject firm and further indicated that various firm functions were transferred to a third party independent contractor located in Asia during the relevant period.

This data, in conjunction with data provided in the initial investigation, shows that the firm was an apparel manufacturer during the relevant period.

On further review it has been determined that the firm's sales and employment declined during the relevant period.

The investigation also revealed that a meaningful portion of the functions performed by the subject firm workers were shifted to a foreign third party

independent contractor and the company subsequently increased their imports of jeans, t-shirts and men's polo shirts from that foreign source during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of jeans, t-shirts and men's polo shirts contributed importantly to the decline in production and to the total or partial separation of workers at I.C. Isaacs & Co., Inc., New York, New York. In accordance with the provisions of the Act, I make the following revised determination:

Workers of I.C. Isaacs & Co., Inc., New York, New York, who became totally or partially separated from employment on or after April 10, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02-29702 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-38,461 and NAFTA-4357]

Oxford Automotive, Argos, IN; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) has granted the Secretary of Labor's motion for a second voluntary remand for further investigation in *Former Employees of Oxford Automotive v. U.S. Secretary of Labor*, No. 01-00453.

The Department's initial denial of NAFTA-Transitional Adjustment Assistance for workers producing automotive side panels at Oxford Automotive, Argos, Indiana, was issued on January 24, 2001, and published in the **Federal Register** on May 9, 2001 (66 FR 23733-34). The negative determination was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. Oxford Automotive did not import articles from Mexico or Canada like or directly competitive with those produced at the Argos, Indiana plant. There was no shift in production from Argos, Indiana, to

Mexico or Canada. Although some of the machinery from the Argos plant had been moved to Mexico and other foreign locations, the machinery was idle. The layoffs at the plant were attributable to the customer's decision to take back the production of the side panels.

The Department's initial denial of Trade Adjustment Assistance for the workers producing automotive side panels at Oxford Automotive, Argos, Indiana, was issued on January 24, 2001, and was published in the **Federal Register** on May 9, 2001 (66 FR 23733-34). The negative determination was based on the finding that the "contributed importantly" criterion of the group eligibility requirements of section 222 of the Trade Act of 1974, as amended, was not met. Oxford Automotive did not import articles like or directly competitive with those produced at the Argos, Indiana plant. The layoffs at the plant were attributable to the customer's decision to take back the production of the side panels.

The petitioners request for reconsideration of TA-W-38,461 and NAFTA-4357 resulted in a negative determination regarding the application, which was issued on April 30, 2001, and was published in the **Federal Register** on May 9, 2001 (66 FR 23732-33).

On remand, the Department contacted officials of Oxford Automotive to obtain clarification regarding a notation on the "Confidential Data Request", contained in the investigation record, that the company was importing from Canada and Mexico.

The investigation on remand confirmed that there were no company imports of side panels in 1998, 1999 or 2000.

Again, on the second voluntary remand, the Department contacted the officials of Oxford Automotive to obtain additional information concerning purchases of the products produced by the subject plant and further requested a list of products (by product number) that were sold to the major customer for the 1999 and 2000 periods.

The U.S. Department of Labor conducted a survey of the major declining customer regarding its purchases of side panels for the periods 1998, 1999 and 2000. The Department also verbally requested that the customer indicate where the products are now being purchased. The major customer revealed that they did not import side panels during the relevant period of the investigation. They further indicated that all products once produced by the Argos facility were subsequently purchased from other

domestic Oxford Automotive facilities through the current period.

The customer further stated that over half of their purchases from domestic Oxford facilities are now shipped to Mexico to meet the customers' Mexican demand. The customer further concluded that all products previously purchased from Oxford Automotive, Argos, Indiana are still being purchased from other Oxford facilities located in the United States through the current period.

The Department of Labor also contacted Oxford Automotive regarding shifts in Argos plant equipment to Mexico during the relevant period.

The company indicated that all production was phased out during the year 2000. The company moved all press equipment to other facilities. The 180 Press Line went to Mexico, in the spring of 2001. Two other major presses (10 presses total and one blanking press) also went to a Mexican facility during the summer of 2002. The rest of the miscellaneous items went to other domestic Oxford plants from 2001 through the current period. All equipment shifted to Mexico remained idle. The equipment has never been used to produce any product in Mexico.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Oxford Automotive, Argos, Indiana.

Signed in Washington, DC, this 31st day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02-29693 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-41,167 and NAFTA-05853]

Tri-Way Manufacturing, Inc., El Paso, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application dated August 9, 2002, the Texas Rural Legal Aid, Inc., Displaced Worker Project, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) under petition TA-W-41,167 and North American Free Trade Agreement-

Transitional Adjustment Assistance (NAFTA-TAA) under NAFTA-5853, applicable to workers and former workers of the subject firm. The denial notices were signed on June 24, 2002, and published in the **Federal Register** on July 9, 2002 (67 FR 45550 and 45551, respectively).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

- (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
- (2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
- (3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition filed on behalf of workers at Tri-Way Manufacturing, Inc., El Paso, Texas, engaged in repair and production of injection molding was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers firm's customers. The survey revealed no imports of injection molds. There were no company imports of injection molds during the relevant period.

The NAFTA-TAA petition for the same group of workers was denied because criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no customer or company imports of injection molds from Mexico or Canada, nor did the subject firm shift production from El Paso to Mexico or Canada.

The petitioner requested that the Department of Labor survey an additional major customer of the subject firm regarding their purchases of injection molds.

On further review, the U.S. Department of Labor conducted a survey of an additional customer of the subject firm regarding their purchases of injection molds during the 2000 and 2001 periods. The survey revealed that the customer did not purchase injection molds from the subject firm during the relevant period. In fact, upon further clarification from the customer, it was revealed that Tri-Way Manufacturing, Inc. only repaired injection molds for the customer.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 31st day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02-29695 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-41,672 and NAFTA-6243]

VMV Paducahbilt, VMV Enterprises, Paducah, KY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at VMV Paducahbilt, VMV Enterprises, Paducah, Kentucky. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-41,672 and NAFTA-06243;
VMV Paducahbilt, VMV
Enterprises, Paducah, Kentucky
(October 16, 2002)

Signed at Washington, DC, this 5th day of November, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02-29697 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA-06070 and NAFTA "06070A"]

Williamson Dickie Manufacturing Company, McAllen #9, McAllen, TX, and Williamson Dickie Manufacturing Company, Weslaco, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on July 2, 2002, applicable to workers of Williamson Dickie Manufacturing Company, McAllen #9, McAllen, Texas. The notice was published in the **Federal Register** on July 18, 2002 (67 FR 47401).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Weslaco, Texas location of Williamson Dickie Manufacturing Company when the plant closed permanently in September, 2002. The workers were engaged in employment related to the production of men's work pants.

Accordingly, the Department is amending the certification to cover workers of Williamson Dickie Manufacturing Company, Weslaco, Texas.

The intent of the Department's certification is to include all workers of Williamson Dickie Manufacturing Company who were adversely affected by the transfer of production to Mexico.

The amended notice applicable to NAFTA-06070 is hereby issued as follows:

All workers of Williamson Dickie Manufacturing Company, McAllen #9, McAllen, Texas (NAFTA-06070) and Williamson Dickie Manufacturing Company, Weslaco, Texas (NAFTA-6070A) who became totally or partially separated from employment on or after April 9, 2001, through July 2, 2004, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02-29699 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-30-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 Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

**Modification to General Wage
Determination Decisions**

The number of 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

Massachusetts

MA020001 (Mar. 1, 2002)
MA020002 (Mar. 1, 2002)
MA020003 (Mar. 1, 2002)
MA020005 (Mar. 1, 2002)
MA020006 (Mar. 1, 2002)
MA020007 (Mar. 1, 2002)
MA020009 (Mar. 1, 2002)
MA020010 (Mar. 1, 2002)
MA020012 (Mar. 1, 2002)
MA020013 (Mar. 1, 2002)
MA020015 (Mar. 1, 2002)
MA020017 (Mar. 1, 2002)
MA020018 (Mar. 1, 2002)
MA020019 (Mar. 1, 2002)
MA020020 (Mar. 1, 2002)
MA020021 (Mar. 1, 2002)

Volume II

Maryland

MD020057 (Mar. 1, 2002)

Volume III

South Carolina

SC020023 (Mar. 1, 2002)

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

Hawaii

HI020001 (Mar. 1, 2002)

**General Wage Determination
Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at www.access.gpo.gov/davisbacon. They are also available electronically by subscription to the Davis-Bacon Online Service (<http://davisbacon.fedworld.gov>) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. 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, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC, this 14th day of November 2002.

Carl J. Poleskey,

*Chief, Branch of Construction Wage
Determinations.*

[FR Doc. 02-29433 Filed 11-21-02; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02-143]

NASA Advisory Council, Minority Business Resource Advisory Committee; 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 forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Thursday, December 12, 2002, 9 a.m. to 4 p.m., and Friday, December 13, 2002, 9 a.m. to 12 Noon.

ADDRESSES: NASA Headquarters, 300 E. Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358-2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Review of Previous Meeting
- Office of Small and Disadvantaged Business Utilization Update of Activities
- NAC Meeting Report
- Overview of Agency-wide initiatives
- Update of Small Business Program
- Public Comment
- Panel Discussion and Review
- Committee Panel Reports
- Status of Open Committee Recommendations
- New Business

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 visitor's register.

June W. Edwards,

*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 02-29773 Filed 11-21-02; 8:45 am]

BILLING CODE 7510-01-P**NUCLEAR REGULATORY COMMISSION**

[ASLBP No. 03-806-01-CO (EA 02-124)]

Exelon Generation Company, LLC, Amergen Energy Company, LLC; Establishment of Atomic Safety and Licensing Board

In the matter of: Braidwood Station, Units 1 & 2/Docket Nos. 50-00456/457-CO; Byron Station, Units 1 & 2/Docket Nos. 50-00454/455-CO; Clinton Power Station/Docket No. 50-00461-CO; Dresden Nuclear Power Station, Units 1, 2, & 3/Docket Nos. 50-00010/237/249-CO; LaSalle County Station, Units 1 & 2/Docket Nos. 50-00373/374-CO; Limerick Generating Station, Units 1 & 2/Docket Nos. 50-00342/353-CO; Oyster Creek Nuclear Generating Station/Docket No. 50-00219-CO; Peach Bottom Atomic Power Station, Units 1, 2, & 3/Docket Nos. 50-00171/277/278-CO; Quad Cities Nuclear Power Station, Units 1 & 2/Docket Nos. 50-00254/265-CO; Three Mile Island, Unit 1/Docket No. 50-00289-CO; and Zion Nuclear Power Station, Units 1 & 2/Docket Nos. 50-00295/304-CO.

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 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: Exelon Generation Company, LLC, and Amergen Energy Company, LLC, (Braidwood Station, Units 1 & 2, et al.).

This Board is being established pursuant to a November 4, 2002 petition for leave to intervene and request for a hearing submitted by Barry Quigley regarding an October 3, 2002 confirmatory order modifying licenses that provides, among other things, for corrective action in the form of counseling and training of personnel involved in violations of 10 CFR 50.7. The issuance of the order followed an investigation by NRC's Office of Investigations to ascertain whether an employee of the Byron Station was discriminated against for raising safety concerns. The October 3, 2002 order, effective immediately, was published in the **Federal Register** (67 FR 63169 (Oct. 10, 2002)).

The Board is comprised of the following administrative judges: Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001

Dr. Charles N. Kelber, 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 administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 18th day of November 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02-29739 Filed 11-21-02; 8:45 am]

BILLING CODE 7590-01-P**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-003, 50-247, and 50-286, License Nos. DPR-5, DPR-26, and DPR-64]

Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated November 8, 2001, filed by Riverkeeper, Inc., *et al.*, hereinafter referred to as the "Petitioners." The petition was supplemented on December 20, 2001. The petition concerns the operation of the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3 (IP1, 2, and 3).

The petition requested that the U.S. Nuclear Regulatory Commission (NRC): (1) Order the licensee to suspend operations, revoke the operating license, or adopt other measures resulting in a temporary shutdown of IP2 and 3; (2) order the licensee to conduct a full review of the facility's vulnerabilities, security measures, and evacuation plans; (3) require the licensee to provide information documenting the existing and readily attainable security measures which protect the IP facility against land, water, and airborne terrorist attacks; (4) immediately modify the IP2 and 3 operating licenses to mandate certain specified security measures sufficient to protect the facility; and (5) order the revision of the licensee's emergency response plan and Westchester County's radiological emergency response plan (RERP) to account for possible terrorist attacks and prepare a comprehensive response to multiple, simultaneous attacks in the region, which could impair the efficient

evacuation of the area. In addition, the Petitioners requested that the NRC take prompt action to permanently retire the facility if, after conducting a full review of the facility's vulnerabilities, security measures, and evacuation plans, the NRC finds that the IP facility cannot be adequately protected against terrorist threats. Further, separately from the above issues, the Petitioners requested that the NRC order the licensee to undertake the immediate conversion of the current water-cooled spent fuel storage system to a dry-cask system.

As the basis for the November 8, 2001, request, the Petitioners stated that: (1) The IP facility is a plausible target of future terrorist actions, (2) actual threats against nuclear power plants have been documented, (3) IP is currently vulnerable to a catastrophic terrorist attack, (4) a terrorist attack on IP2 and 3 would have significant public health, environmental, and economic impacts, and (5) the Westchester County's RERP is inadequate because it is based on erroneous assumptions.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on May 16, 2002. The Petitioners responded with comments on August 9, 2002, and the licensee had no comments. The Petitioners' comments and the NRC staff's response to them are included with the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to order the licensee to suspend operations, revoke the operating license, or adopt other measures resulting in a temporary shutdown of IP2 and 3, be denied. The reasons for this decision, along with the reasons for decisions regarding the remaining Petitioners' requests, are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD 02-06), the complete text of which is available in the Agencywide Documents Access and Management System (ADAMS) for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the NRC Web site (<http://www.nrc.gov/reading-rm.html>).

As stated in its letter to the Petitioners on December 20, 2001, the NRC has, in effect, partially granted the Petitioners' request for an immediate security upgrade at IP2 and 3. On September 11, 2001, the NRC took action to enhance security at all nuclear facilities, including IP2 and 3. Immediately after the attacks, the NRC advised all nuclear power plants to go to the highest level of security, which they promptly did. These facilities have remained at a

heightened security level since that time. The NRC continues to work with other Federal agencies and is monitoring relevant information it receives on security matters at nuclear facilities. The NRC is prepared to make immediate adjustments as necessary to ensure adequate protection of the public.

The NRC issued Orders on February 25, 2002, to all commercial nuclear power plants to implement interim compensatory security measures for the current threat environment. Some of the requirements made mandatory by the Orders formalized the security measures that NRC licensees had taken in response to advisories issued by the NRC in the aftermath of the September 11 terrorist attacks. The Orders also imposed additional security enhancements, which have emerged based on the NRC's assessment of the current threat environment and its ongoing security review. The requirements will remain in effect until the NRC determines that the level of threat has diminished, or that other security changes are needed. The specific actions are sensitive, but include increased patrols, augmented security forces and capabilities, additional security posts, installation of additional physical barriers, vehicle checks at greater stand-off distances, enhanced coordination with law enforcement and military authorities and more restrictive site access controls for all personnel. Regarding the Petitioners' request for specific information about the security measures, the NRC's policy is to not release safeguards information to the public. Thus, this request is denied.

The NRC in its February 25, 2002, Orders also directed licensees to evaluate and address potential vulnerabilities to maintain or restore cooling to the core, containment, and spent fuel pool and to develop specific guidance and strategies to respond to an event that damages large areas of the plant due to explosions or fires. These strategies are intended to help licensees to identify and utilize any remaining onsite or offsite equipment and capabilities. If NRC's ongoing security review recommends any other security measures, the NRC will take appropriate action.

The NRC denies the Petitioners' request to mandate certain security measures, as specified by the Petitioners, for the protection of the facility, such as a system to defend a no-fly zone. The NRC considers that the collective measures taken since September 11, 2001, provide adequate protection of public health and safety.

The NRC finds that the existing emergency response plans are flexible enough to respond to a wide variety of adverse conditions, including a terrorist attack. The NRC advisories and the Orders issued since September 11, 2001, directed licensees to take specific actions deemed appropriate to ensure continued improvements to existing emergency response plans. The Petitioners' concern that the emergency plans do not contemplate multiple attacks on the infrastructure is alleviated by the fact that the emergency plans are intended to be broad and flexible enough to respond to a wide spectrum of events. Thus, the Petitioners' request that the onsite and offsite emergency plans be revised to account for possible terrorist attacks has been, in part, granted.

The NRC finds that the current spent fuel storage system and the security provisions at IP adequately protect the spent fuel. Thus, the Petitioners' request to order the installation of a dry-cask storage facility is denied. However, the licensee has stated its intention to add such a facility.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 18th day of November, 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02-29738 Filed 11-21-02; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Solicitation of Public Comments on the Third Year of Implementation of the Reactor Oversight Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: Nearly 3 years have elapsed since the U.S. Nuclear Regulatory Commission (NRC) implemented its revised Reactor Oversight Process (ROP). The NRC is currently soliciting comments from members of the public, licensees, and interest groups related to

the implementation of the ROP. This is a followup to the **Federal Register** notice (FRN) issued in November 2001 requesting feedback on the second year of implementation.

DATES: The comment period expires on December 27, 2002. The NRC will consider comments received after this date if it is practical to do so, but is only able to ensure consideration of comments received on or before this date.

ADDRESSES: Comments may be e-mailed to nrcprep@nrc.gov or sent to Michael T. Lesar, Chief, Rules and Directives Branch, Office of Administration (Mail Stop T6-D59), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments may also be hand-delivered to Mr. Lesar at 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Documents created or received at the NRC after November 1, 1999, are available electronically through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm.html>. From this site, the public can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. For more information, contact the NRC's Public Document Room (PDR) reference staff at 301-415-4737 or 800-397-4209, or by e-mail at pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Maley, Office of Nuclear Reactor Regulation (Mail Stop OWFN 7A15), U.S. Nuclear Regulatory Commission, Washington DC 20555-0001. Mr. Maley can also be reached by telephone at 301-415-2919 or by e-mail at mjmm3@nrc.gov.

SUPPLEMENTARY INFORMATION:

Program Overview

The mission of the NRC is to regulate the civilian uses of nuclear materials in the United States to protect the health and safety of the public and the environment, and to promote the common defense and security by preventing the proliferation of nuclear material. The mission is accomplished through the following activities:

- License nuclear facilities and the possession, use, and disposal of nuclear materials.
- Develop and implement requirements governing licensed activities.
- Inspect and enforce licensee activities to ensure compliance with these requirements and the law.

While the NRC's responsibility is to monitor and regulate licensee's performance, the primary responsibility for safe operation and handling of nuclear materials rests with each licensee.

As the nuclear industry in the United States has matured for more than 25 years, the NRC and its licensees have learned much about how to safely operate nuclear facilities and handle nuclear materials. In April 2000, the NRC began to implement more effective and efficient inspection, assessment, and enforcement approaches, which apply insights from these years of regulatory oversight and nuclear facility operation. The NRC has also incorporated risk-informed principles and techniques into its oversight activities. A risk-informed approach to oversight enables the NRC to more appropriately apply its resources to oversight of operational areas that contribute most to safe operation at nuclear facilities.

After conducting a 6-month pilot program in 1999, assessing the results, and incorporating the lessons learned, the NRC began implementing the revised Reactor Oversight Process (ROP) at all 103 nuclear facilities (except D.C. Cook) on April 2, 2000. Inherent in the ROP are the following key NRC performance goals:

- (1) Maintain safety by establishing and implementing a regulatory oversight process that ensures that plants are operated safely.
- (2) Enhance public confidence by increasing the predictability, consistency, and objectivity of the oversight process; providing timely and understandable information; and providing opportunities for meaningful involvement by the public.
- (3) Improve the effectiveness, efficiency, and realism of the oversight process by implementing a process of continuous improvement.
- (4) Reduce unnecessary regulatory burden through the consistent application of the process and incorporation of lessons learned.

Key elements of the ROP include revised NRC inspection procedures, plant performance indicators, a significance determination process, and an assessment program that incorporates various risk-informed thresholds to help determine the level of NRC oversight and enforcement. Since process development began in 1998, the NRC has frequently communicated with the public by various means. These have included conducting public meetings in the vicinity of each licensed commercial nuclear power plant, issuing FRNs soliciting feedback on the process,

publishing press releases about the new process, conducting multiple public workshops, placing pertinent background information in the NRC's Public Document Room, and establishing an NRC Web site containing easily accessible information about the new program and licensee performance.

NRC Public Stakeholder Comments

The NRC continues to be interested in receiving feedback from members of the public, various public stakeholders, and industry groups on their insights regarding the third year of implementation of the ROP. In particular, the NRC is seeking responses to the questions listed below, which will provide important information that the NRC can use in ongoing program improvement. A summary of the feedback obtained will be provided to the Commission and included in the annual ROP self-assessment report.

Questions

Questions Related to Specific ROP Program Areas

(As appropriate, please provide specific examples and suggestions for improvement.)

(1) Does the Performance Indicator Program minimize the potential for licensees to take actions that adversely impact plant safety?

(2) Does appropriate overlap exist between the Performance Indicator Program and the Inspection Program?

(3) Do reporting conflicts exist, or is there unnecessary overlap between reporting requirements of the ROP and those associated with the Institute of Nuclear Power Operations (INPO), the World Association of Nuclear Operations (WANO), or the Maintenance Rule?

(4) Does NEI 99-02, "Regulatory Assessment Performance Indicator Guideline" provide clear guidance regarding Performance Indicators?

(5) Is the information in the inspection reports useful to you?

(6) Does the Significance Determination Process yield equivalent results for issues of similar significance in all ROP cornerstones?

(7) Does the NRC take appropriate actions to address performance issues for those licensees outside of the Licensee Response Column of the Action Matrix?

(8) Is the information contained in assessment reports relevant, useful, and written in plain English?

Questions Related to the Efficacy of the Overall Reactor Oversight Process (ROP)

(As appropriate, please provide specific examples and suggestions for improvement.)

(9) Are the ROP oversight activities predictable (*i.e.*, controlled by the process) and objective (*i.e.*, based on supported facts, rather than relying on subjective judgement)?

(10) Is the ROP risk-informed, in that the NRC's actions are graduated on the basis of increased significance?

(11) Is the ROP understandable and are the processes, procedures and products clear and written in plain English?

(12) Does the ROP provide adequate assurance that plants are being operated and maintained safely?

(13) Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process?

(14) Does the ROP enhance public confidence?

(15) Has the public been afforded adequate opportunity to participate in the ROP and to provide inputs and comments?

(16) Has the NRC been responsive to public inputs and comments on the ROP?

(17) Has the NRC implemented the ROP as defined by program documents?

(18) Does the ROP reduce unnecessary regulatory burden on licensees?

(19) Does the ROP result in unintended consequences?

(20) Please provide any additional information or comments on other program areas related to the Reactor Oversight Process.

Dated in Rockville, Maryland, this 15th day of November, 2002.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-29736 Filed 11-21-02; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Huntsman Polymers Corporation, 11¾% Senior Notes (due 2004)) File No. 1-9988

November 18, 2002.

Huntsman Polymers Corporation, a Delaware 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 11¾% Senior Notes (due 2004) ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer approved resolutions on October 15, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Issuer's Security from the Exchange, the Issuer's Board notes that the debt market for the Security is relatively small and offers significantly less liquidity and price discovery to investors compared to the NYSE equity market. In addition, the Board represents that competitive market forces, influenced both by the costs associated with maintaining the listing and by relative difference in trading volume, have made the over-the-counter markets the dominant venue for trading debt securities. The Issuer states that it is currently seeking quotation of the Security on the over-the-counter markets.

The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before December 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 NYSE 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.

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78l(b).

⁴ 15 U.S.C. 78l(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-29762 Filed 11-21-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 25, 2002:

A closed meeting will be held on Monday, November 25, 2002, at 2:30 p.m., and an open meeting will be held on Tuesday, November 26, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Monday, November 25, 2002, will be:

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

The subject matter of the open meeting scheduled for Tuesday, November 26, 2002, will be:

1. The Commission will consider whether to issue a release proposing amendments to rule 10b-18 (the safe harbor for issuer repurchases), and amendments to regulations S-K and S-B under the Securities and Exchange Act of 1934, Exchange Act forms 10-Q, 10-QSB, 10-K, 10-KSB, and 20-F, and proposed form N-CSR under the Exchange Act and the Investment Company Act of 1940, regarding disclosure of issuer repurchases.

2. The Commission will consider whether to propose new rule 3a-8 under the Investment Company Act of 1940 that would provide a nonexclusive safe

⁵ 17 CFR 200.30-3(a)(1).

harbor from the definition of investment company for certain *bona fide* research and development companies.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: November 19, 2002.

Jonathan G. Katz,
Secretary.

[FR Doc. 02-29821 Filed 11-19-02; 4:18 pm]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46843; File No. SR-NASD-2002-33]

Self Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees for Nasdaq Data Entitlement Packages

November 18, 2002.

I. Introduction

On March 7, 2002, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² a proposed rule change to establish fees for new Nasdaq market data products. On April 25, 2002, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.³ On July 29, 2002, Nasdaq filed Amendment No. 2 that entirely replaced the original rule filing and Amendment No. 1.⁴ On August 23, 2002, Nasdaq filed Amendment No. 3 that entirely replaced the original rule filing and Amendment Nos. 1 and 2.⁵ On September 13, 2002,

the Nasdaq submitted Amendment No. 4 that entirely replaced the original rule filing and Amendment Nos. 1, 2, and 3.⁶ The proposed rule change, as amended, was published for comment in the **Federal Register** on September 27, 2002.⁷ The Commission did not receive any comments on the proposed rule change. On October 3, 2002, Nasdaq filed Amendment No. 5 to the proposed rule change.⁸ This order approves the proposed rule change, as amended, and notices and grants accelerated approval to Amendment No. 5.

II. Description of the Proposal

Nasdaq proposes to amend NASD rule 7010 to establish fees for new Nasdaq data entitlement packages. In its rule filings regarding SuperMontage,⁹ Nasdaq described its new data feeds and products: the Nasdaq Prime data feed, which will provide the new data for a Nasdaq entitlement package called "TotalView," and the Aggregate Depth at Price ("ADAP") data feed, which will provide the new data entitlement packages called "DepthView" and "PowerView".¹⁰

A. TotalView

TotalView will provide, on a real-time basis: (1) All individual attributable quote/order information at the five best price levels displayed by the Nasdaq SuperMontage system; (2) the aggregate size of all unattributed quotes or orders at each of the top five price levels, on both sides of the market, that are in the SuperMontage system; (3) the aggregate attributable and unattributable quotes and orders at each of the top five price levels, on both sides of the market, that are in the SuperMontage system; (4) the quote and order data found in the Nasdaq Quotation Dissemination

⁶ See Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 13, 2002.

⁷ See Securities Exchange Act Release No. 46521 (September 20, 2002), 67 FR 61179 ("notice").

⁸ See Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 3, 2002 ("Amendment No. 5"). In Amendment No. 5, Nasdaq corrected grammatical errors in the rule language text of the proposed rule change; amended a footnote to the rule language text to state that Nasdaq itself is a distributor of its data feed(s); and added a footnote to rule 7010(q)(2)(A) stating that Nasdaq is a distributor of its data feed(s) and will execute a Nasdaq distributor agreement and pay the distributor charge.

⁹ These rule filings were approved by the Commission in Securities Exchange Act Release Nos. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) and 45790 (April 19, 2002), 67 FR 21007 (April 29, 2002).

¹⁰ As described further below, PowerView includes data from ADAP and the NQDS data feed.

Service ("NQDS")¹¹ data feed, including the best attributed quotation from each Nasdaq participant, and (5) the Nasdaq Inside Price. Nasdaq proposes to charge distributors¹² of TotalView \$7500.00 per month. In addition, Nasdaq proposes to charge \$150.00 per month per controlled device.¹³ According to Nasdaq, TotalView will use significantly more bandwidth than any Nasdaq data entitlement to date. In addition, Nasdaq believes that this data product is highly specialized and thus has not proposed a non-professional fee at this time.

B. DepthView

DepthView will provide the aggregated size at each of the top five price levels, both on the bid and the ask, within the Nasdaq SuperMontage system. Nasdaq proposes to charge \$50.00 per month for each controlled device and \$25.00 per month for each controlled device of a non-professional.¹⁴ According to Nasdaq,

¹¹ The NQDS data feed currently consists of: (1) Real-time quotes for each Market Maker and Electronic Communication Network ("ECN") in NASDAQ National Market and SmallCap issues; (2) real-time best bid or offer ("BBO") quotes for each regional UTP exchange that quotes in NASDAQ-listed issues; and (3) real-time National BBO quote appendages for NASDAQ National Market and SmallCap issues. Telephone conversation between Eleni Constantine, Associate General Counsel, Office of General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, September 19, 2002.

¹² Nasdaq proposes that a "distributor" be defined as any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. Further, Nasdaq proposes that all distributors execute a Nasdaq distributor agreement. Nasdaq itself is a distributor if its data feeds. Accordingly it must execute an agreement and pay the distributor fee.

¹³ Nasdaq proposes that a "controlled device" be defined as any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) Access the information in the Nasdaq Data Entitlement Package(s); or (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package. If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not have to pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information. Customers of the basic service would be excluded from the entitlement requirement.

¹⁴ Nasdaq proposes that a "non-professional" be defined as a natural person who is neither: (a) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor"

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 25, 2002.

⁴ See Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 26, 2002.

⁵ See Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 22, 2002.

DepthView requires more processing capacity to calculate its five aggregated price levels on each side of the market. Nasdaq represented that the price for DepthView was based on the increased processing capacity needed and a review of the prices charged by other major exchanges for aggregated order data.

C. PowerView

PowerView will include both the data available through DepthView and the data available in the NQDS data feed,¹⁵ including the best-attributed quotation from each Nasdaq participant in each Nasdaq National Market and Small Cap Market stock. Nasdaq proposes to charge \$75.00 per month per controlled device and \$29.00 per month per controlled device of non-professionals.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,¹⁶ and in particular, the requirements of section 15A(b)(5) of the Act,¹⁷ which requires that the rules of an association provide for the equitable allocation of reasonable fees, dues and other charges among members and issuers and other persons using any facility or system which the association operates or controls. Specifically, the Commission believes that the NASD's proposed charges for these new data products are reasonable when compared to similar types of services provided by other markets.¹⁸ Further, Nasdaq has represented that these new data products will provide more market data than currently provided and will require significantly more bandwidth and systems capacity.

Nasdaq has proposed lower fee charges for non-professionals for DepthView and PowerView. The Commission believes that should

as that term is defined in section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (c) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

¹⁵ See note 11, *supra*.

¹⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78o-3(b)(5).

¹⁸ For example, the New York Stock Exchange's OpenBook service has a monthly charge of \$5000.00 for receipt of the data feed and \$50.00 for each end-user terminal. See Securities Exchange Act Release No. 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001).

provide an opportunity for many investors to have access to the enhanced data provided by these services, which should help to increase transparency. Nasdaq represented that it may consider a non-professional fee for TotalView in the future.

Nasdaq has proposed a new definition for controlled devices. With this new definition, Nasdaq will impose charges on all devices that have the capacity to either access or to utilize a particular data feed, whether the controlled device displays the data, "receives" the data, or has the ability to utilize the data even though the data remains on another device. A distributor is required to pay the controlled device fee for all such devices that are part of a network that receives a particular data feed. Nasdaq has proposed, however, that distributors that can demonstrate that a particular controlled device in fact has no capacity to access or use the data will not be charged the controlled device fee. The Commission believes that the proposed definition of controlled device is consistent with the requirements of the Act, which permits an association to impose reasonable fees on persons who are using a facility or system of such association.

In its notice, Nasdaq represented that it will not impose any restrictions on redistribution of the data products to qualified vendors and broker-dealers that have entered into Distributor Agreements with Nasdaq. According to Nasdaq, its display requirements are covered by the Distributor Agreements. The Commission notes that this order only approves the fees proposed by Nasdaq for the data products and therefore, the Commission is not approving or disapproving the terms of Nasdaq's Distributor Agreements.

Finally, the Commission notes that Nasdaq has acknowledged that persons who subscribe to receive the new data products, to the extent that they act as a vendor, must comply with the requirements of the Vendor Display rule.¹⁹ Specifically, the Vendor Display rule establishes minimum requirements governing the manner in which transaction, quotation, and other market information is displayed in certain exchange-listed and Nasdaq-listed securities ("subject securities"). Generally, under the rule, vendors that provide quotation information with respect to subject securities must provide a consolidated display of quotation information from all reporting

¹⁹ 17 CFR 240.11Ac1-2. Vendors purchasing data feeds from Nasdaq are likewise responsible for the compliance with the Vendor Display rule. See also notice, *supra* note 7.

market centers for that security. Because DepthView, PowerView, and TotalView do not, individually, satisfy the consolidated display requirement of the rule, vendors, including Nasdaq itself to the extent it acts as a vendor, will need to disseminate additional quotation information along with these data products to comply with the rule. In this connection, the Commission notes that Nasdaq has put statements to this effect on its website description of these services and its subscription contracts.

The Commission finds good cause for approving Amendment No. 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 5 merely provides technical corrections and clarification to the proposed rule text, which was reflected in the notice of the proposed rule change. The Commission, therefore, believes that granting accelerated approval of Amendment No. 5 is appropriate and consistent with section 15A(b)(6)²⁰ and section 19(b)²¹ of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-33 and should be submitted by December 13, 2002.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder. It is therefore ordered, pursuant to section

²⁰ 15 U.S.C. 78o-3(b)(6).

²¹ 15 U.S.C. 78s(b).

19(b)(2) of the Act,²² that the proposed rule change (SR-NASD-2002-33), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-29761 Filed 11-21-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46840; File No. SR-Phlx-2002-59]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Program To Disengage Its Automatic Execution System ("AUTO-X") for a Period of Thirty Seconds After the Number of Contracts Automatically Executed in a Given Option Meets the AUTO-X Minimum Guarantee for That Option

November 15, 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 October 2, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis, for an additional six-month pilot, to expire on May 30, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for an additional six months, its pilot program effecting a systems change to AUTO-X, the automatic execution feature of the Exchange's Automated Options Market System ("AUTOM"),³ that would

disengage AUTO-X for a period of thirty seconds after the number of contracts automatically executed in a given option meets the AUTO-X minimum guarantee for that option. The pilot program was originally approved on a six-month basis for a limited number of eligible options,⁴ and subsequently extended for an additional six-month period.⁵ Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.⁶ The pilot has since been extended twice for additional six-month periods, the latest extension is scheduled to expire November 30, 2002.⁷

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 III 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 Phlx proposes to extend the pilot program for an additional six-month period. On December 1, 2000, the Initial Pilot Program became effective.⁸ The pilot program was then extended several times and is currently scheduled to end on November 30, 2002.⁹ The pilot program includes the following features:

AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange's trading floor.

⁴ See Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR-Phlx-00-96) ("Initial Pilot Program").

⁵ See Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR-Phlx-2001-56).

⁶ See Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR-Phlx-2001-79).

⁷ See Securities Exchange Act Release Nos. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR-Phlx-2002-22) ("Last Extension"); and 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR-Phlx-2001-100).

⁸ See *supra* note 4.

⁹ See Last Extension, *supra* note 7.

- Once an automatic execution occurs in an option via AUTO-X, the system would begin a "counting" program, which would count the number of contracts executed automatically for that option, up to the maximum guaranteed AUTO-X size,¹⁰ regardless of the number of executions.

- When the number of contracts executed automatically for that option meets the maximum guaranteed AUTO-X size within a fifteen second time frame, the system would cease to automatically execute for that option, and would drop all AUTO-X eligible orders in that option for manual handling by the specialist for a period of thirty seconds to enable the specialist to refresh quotes in that option.¹¹

- Upon the expiration of thirty seconds, automatic executions would resume and the "counting" program would be set to zero and begin counting the number of contracts executed automatically within a fifteen second time frame again, up to the maximum guaranteed AUTO-X size.

- Again, when the number of contracts automatically executed meets the maximum guaranteed AUTO-X size within a fifteen second time frame, the system would drop all subsequent AUTO-X eligible orders for manual handling by the specialist for a period of thirty seconds.

A significant purpose of this pilot program is to enable the Exchange to move towards the dissemination of

¹⁰ Recently, the Exchange filed proposed amendments to Exchange Rule 1080(c) to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum AUTO-X eligible size range, on an issue-by-issue basis. See SR-Phlx-2002-39 (submitted July 2, 2002), and Amendment No. 1 thereto (submitted August 23, 2002). Under that proposal, the maximum guaranteed AUTO-X size may be for a different number of contracts for customer orders than for broker-dealer orders. Upon implementation of that proposal, subject to Commission approval, when the maximum guaranteed AUTO-X size in an option is for a different number of contracts for customer orders than for broker-dealer orders, AUTO-X would be disengaged when the larger of the two maximum guaranteed AUTO-X sizes for the particular option is exhausted.

¹¹ Any orders delivered in excess of the minimum AUTO-X guarantee will be executed to the guaranteed amount and the excess will be dropped to the specialist for manual execution. See Initial Pilot Program, *supra* note 4. The Exchange has represented that, for the thirty seconds that AUTO-X is disengaged, the specialist will be required to honor the disseminated quote unless the specialist is in the process of refreshing his or her quote. The Exchange has further represented that, generally, it should not take the specialist the full thirty seconds to update his or her quote, and that the Exchange will surveil for any potential abuse. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sonia Patton, Special Counsel, Division of Market Regulation ("Division"), Commission, on November 7, 2002.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for

options quotations with size.¹² As discussed above, the “counting” feature of the pilot program functions to disengage AUTO-X for a period of thirty seconds in a given option once the number of contracts automatically executed meets the maximum guaranteed AUTO-X size for that option within a fifteen-second time frame. A similar “counting” mechanism is being utilized as part of the roll-out of a new Auto-Quote system that includes an AUTO-X guaranteed size equal to the Exchange’s disseminated size, subject to a minimum and maximum guaranteed AUTO-X size, on an issue-by-issue basis, which is currently pending Commission approval.¹³ Thus, the proposed extension of the pilot program should allow the Exchange to continue its efforts in the process of deploying the new Auto-Quote system.

The Exchange believes that an extension of the pilot program would enable specialists to continue to provide fair and orderly markets during peak market activity by manually executing orders at correct market prices and refreshing quotations to reflect market demand.

In addition, the Exchange recognizes that Commission staff has inquired into the possibility of re-engaging AUTO-X in less than thirty seconds once the specialist revises the quote. The Exchange’s Financial Automation, Legal, and Regulatory staff have begun to review the issue, specifically as to whether it is feasible to re-engage AUTO-X for an entire issue based upon the revision of a quotation in one single series.¹⁴ Pursuant to this review, the Exchange has determined to automate the re-engagement of AUTO-X for an option issue upon the revision of a quotation in a single series of such issue, provided that the revised quotation occurs in the series that exhausted the AUTO-X guarantee. The Exchange believes that, with the ultimate implementation of the new Auto-Quote system, the Exchange should, over the proposed additional

six-month pilot period, be able to more accurately evaluate its ability to re-engage AUTO-X in an entire class of options upon the revision of a quote in a single option series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act¹⁵ in general, and with section 6(b)(5) in particular,¹⁶ in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission’s Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2002-59 and should be submitted by December 13, 2002.

IV. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.¹⁸ The Commission believes that an extension of the pilot program for an additional six months should allow the Exchange to continue its efforts to deploy its new Auto-Quote system to prepare for the dissemination of quotes with size. In addition, the Commission believes that the proposal should assist specialists in maintaining fair and orderly markets during periods of peak market activity.

The Commission notes that the Exchange is attempting to address its concern regarding the feasibility of re-engaging AUTO-X for a particular issue prior to thirty seconds if the quote has been revised by the specialist before that time period. The Exchange has represented that it will automate the re-engagement of AUTO-X for an option issue once the AUTO-X guarantee in a single series of such issue has been met and the quote has been updated prior to the thirty-second period. Consequently, the Commission believes that extending the pilot program for an additional six months should enable the Phlx to further evaluate its ability to re-engage AUTO-X in an entire class of options upon the revision of a quote in a single option series.

The Commission notes that the Exchange has represented that it will continue to evaluate the pilot program by reviewing specialists’ performance, and by monitoring any complaints relating to the pilot program.¹⁹ Furthermore, the Commission notes that the Exchange has represented that it will continue to post on its website a list of options included in the pilot program, as well as issue a circular to this effect to members, member

¹² The Commission recently approved amendments to the Exchange’s definition of “disseminated size” to mean, with respect to the disseminated price for any quoted options series, at least the sum of limit orders. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders. See Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR-Phlx-2002-15) (order approving amendments to Exchange Rule 1082(a)(ii) and Option Floor Procedure Advice F-7).

¹³ See SR-Phlx-2002-39, and Amendment No. 1 thereto.

¹⁴ Under Phlx’s current pilot program, AUTO-X is programmed to re-engage after thirty seconds, regardless of whether the specialist has updated its quote prior to that period of time.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sonia Patton, Special Counsel, and Sapna C. Patel, Attorney, Division, Commission, on November 6, 2002.

organizations, participants, and participant organizations explaining the pilot program and the circumstances in which the AUTO-X system will not be available for customer orders.²⁰

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,²¹ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that during the last six-month extension of the pilot program, the Phlx has received no complaints from customers, floor traders, or member firms. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow Phlx to continue, without interruption, the existing operation of its AUTO-X system.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²² that the proposed rule change (SR-Phlx-2002-59), is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on May 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-29714 Filed 11-21-02; 8:45 am]

BILLING CODE 8010-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of Central America Free Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to the Trade Act of 2002, and consistent with Executive Order 13141 (64 FR 63169) (Nov. 18, 1999) and its implementing guidelines (65 FR 79442), the Office of the United States

²⁰ Phlx has also represented that it will include language in its circular clarifying that AUTO-X will not be re-engaged until the expiration of the thirty second period, even after a quote is revised. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sonia Patton, Special Counsel, and Sapna C. Patel, Attorney, Division, Commission, on November 6, 2002.

²¹ 15 U.S.C. 78s(b)(2).

²² Id.

²³ 17 CFR 200.30-3(a)(12).

Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed United States-Central America Free Trade Agreement (US-CAFTA). The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for U.S. environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than January 15, 2003.

ADDRESSES: Submissions by electronic mail: FR0053@ustr.gov.

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395-3475. Questions concerning the environmental review should be addressed to Jonathan Fritz, Environment and Natural Resources Section, USTR, telephone (202) 395-7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On October 1, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified the Congress of the President's intent to enter into trade negotiations with the five member countries (*i.e.*, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) of the Central American Economic Integration System (CAEIS). Ambassador Zoellick outlined U.S. objectives for the US-CAFTA in the notification letters to the Congress. The letters to House Speaker Dennis Hastert and Senate President Pro Tempore Robert Byrd can be found on the USTR Website at www.ustr.gov/releases/2002/2002-10-01-centralamerica-house.PDF

and www.ustr.gov/releases/2002/2002-10-01-centralamerica-senate.PDF, respectively. The TPSC invited the public to provide written comments and/or oral testimony at a public hearing on the proposed US-CAFTA scheduled for November 19, 2002, to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 63954).

US-CAFTA will build on the Caribbean Basin Initiative (CBI). Since 1985, the U.S. trade relationship with Central America has been driven by U.S. unilateral trade preferences through the CBI. By moving from unilateral trade preferences to a reciprocal FTA, the US-CAFTA will seek to eliminate duties and unjustified barriers to trade in both U.S.- and Central American-origin goods and also address trade in services, trade in agricultural products, investment, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. US-CAFTA is expected to contribute to stronger economies, the rule of law, sustainable development, and more accountable institutions of governance, complementing ongoing domestic, bilateral, and multilateral efforts in the region. Finally, US-CAFTA will lend momentum to concluding the Free Trade Area of the Americas negotiations by January 2005.

Two-way trade in goods between the United States and the member countries of the CAEIS totaled \$20 billion in 2001, consisting of \$9 billion in U.S. exports and \$11 billion in U.S. imports. Leading U.S. exports to Central America include apparel products, machinery, electrical machinery and equipment, and plastics. Leading U.S. imports from Central America include apparel and textile products and edible fruits.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. Determining the review's scope includes consideration of the environmental dimensions of the

regulatory and trade policies at issue, including ways in which the trade agreement can complement U.S. environmental objectives. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "US-CAFTA Environmental Review" followed by "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance

and may be made by calling (202) 395-6186.

USTR also welcomes and will take into account the public comments on US-CAFTA environmental issues submitted in response to a previous notice—the **Federal Register** notice dated October 16, 2002 (67 FR 63954) requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues. These comments will also be made available for public inspection. General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (<http://www.ustr.gov>).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02-29691 Filed 11-21-02; 8:45 am]

BILLING CODE 3190-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of the U.S.-Morocco Free Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to the Trade Act of 2002, and consistent with Executive Order 13141 (64 FR 63169) (Nov. 18, 1999) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed Free Trade Agreement (FTA) between the United States and Morocco. The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects (both positive and negative) that might flow from the free trade agreement, including the potential implications for our environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which

the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than January 15, 2003.

ADDRESSES: Submissions by electronic mail: FR0054@ustr.gov.

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395-3475. Questions concerning the environmental review should be addressed to Jennifer Prescott, Office of Environment and Natural Resources, USTR, telephone (202) 395-7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On October 1, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified the Congress of the President's intent to enter into trade negotiations with Morocco. Ambassador Zoellick outlined the specific U.S. objectives for the Morocco FTA in the notification to the Congress. The letters to House Speaker Dennis Hastert and Senate President Pro Tempore Robert Byrd can be found on the USTR Web site at <http://www.ustr.gov/releases/2002/2002-10-01-morocco-house.PDF> and <http://www.ustr.gov/releases/2002/2002-10-01-morocco-senate.PDF>, respectively. The TPSC has invited the public to provide written comments and/or oral testimony at a public hearing scheduled for November 21, 2002, to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 63187) (Oct. 10, 2002).

The U.S.-Morocco FTA will build on the bilateral work that began in 1995 under the U.S.-Morocco Trade and Investment Framework Agreement (TIFA). The U.S.-Morocco FTA will seek to eliminate duties and unjustified barriers to trade in both U.S.- and Moroccan-origin goods and also address trade in services, trade in agricultural products, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. The FTA is expected to contribute to stronger economies, the rule of law, sustainable development, and more accountable institutions of governance. The FTA will also help to

support and accelerate economic and political reforms already underway in Morocco.

Over the past six years, U.S. exports to Morocco averaged \$475 million annually, led by exports in the aircraft, cereals, and machinery sectors. Morocco's average applied tariff is more than 20 percent. By comparison, U.S. tariffs on Moroccan exports to the United States are already low or zero in many cases. Transistors, semiconductors, phosphates, and other minerals, which make up a large share of Moroccan exports to the United States, are already granted duty-free entry.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. Determining the review's scope includes consideration of the environmental dimensions of the regulatory and trade policies at issue, including ways in which the trade agreement can complement U.S. environmental objectives. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "United States-Morocco Environmental Review" followed by "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should

begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395-6186.

USTR also welcomes and will take into account the public comments on environmental issues submitted in response to a previous notice—the **Federal Register** Notice dated October 10, 2002 (67 FR 63187)—requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues. These comments will also be made available for public inspection.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (<http://www.ustr.gov>).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02-29692 Filed 11-21-02; 8:45 am]

BILLING CODE 3190-01-P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation; Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 9 a.m. on Monday, December 16, 2002, at 445 Antiqua Lane, Palm Beach, Florida. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than December 9, 2002, Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202-366-6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on November 18, 2002.

Marc C. Owen,
Chief Counsel.

[FR Doc. 02-29708 Filed 11-21-02; 8:45 am]

BILLING CODE 4910-61-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS America) will hold a meeting of its Board of Directors on Monday, December 9, 2002. The meeting runs from 10 a.m. to 3 p.m. The session includes the following items: (1) Call to Order; (2) Welcome, Introductions, ITS America antitrust policy, Conflict of Interest Statements; (3) Consent Agenda: (a) Approval of Minutes of the October 17, 2002, Board Meeting; (b) ITS Federal Report; (c) Finance Committee Report; (d) TEA-21 Reauthorization Task Force Report; (e) Council Reports; (f) Coordinating Council; (g) International Affairs

Council; (h) State Chapters Council; (i) Executive Forum for Business & Trade Charter; (4) Chairman's Report—Executive Committee Report; (5) President's Report—ITS World Congress, Staff News, Other; (6) Finance Committee Report—Investment Performance Report and 2003 Budget; (7) ITS World Congress/Annual Meeting Task Force Report; (8) Policy Manual—Presentation of Final Revisions and Approval; (9) Strategic Planning Committee Report & Discussion—Report Out from Group Discussion and Approve 2003–2007 Strategic Plan; (10) New Business; (11) Adjourn.

ITS America provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS America establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS America will meet on Monday, December 9, 2002, from 10 a.m.–3 p.m.

ADDRESSES: The Rosen Centre Hotel, 9840 International Drive, Orlando, Florida, 32819; phone: (800) 800–9840; Fax: (407) 996–2659.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS America, 400 Virginia Avenue, SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS America by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.s.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: November 15, 2002.

Jeffrey F. Paniati,

Acting Associate Administrator, Office of Operations, Federal Highway Administration, and Acting Director, ITS Joint Program Office, US Department of Transportation.

[FR Doc. 02–29760 Filed 11–21–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 178X)]

Union Pacific Railroad Company— Abandonment Exemption—in Yuma and Maricopa Counties, AZ

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 76.61-mile rail line over the Phoenix Subdivision from milepost 782.25 near Roll to milepost 858.86 near Arlington, in Yuma and Maricopa Counties, AZ. The line traverses United States Postal Service zip codes 85322, 85326, 85333, 85347, 85354, and 85356.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the line has not been used as an overhead route for the past 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 2, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 12, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 29, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by November 22, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: November 15, 2002.

By the Board, David M. Konschnick,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02–29603 Filed 11–21–02; 8:45 am]

BILLING CODE 4915–00–P

² Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY**Office of the Assistant Secretary for International Affairs; Treasury International Capital (TIC) Forms CQ-1 and CQ-2**

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it has revised the mandatory data collections on the Treasury International Capital (TIC) C-forms. The revisions are effective for all reports beginning with reporting periods ending March 31, 2003 and thereafter; until that time, the current mandatory TIC C-forms and instructions remain in force. The revisions include revised instructions and two revised forms: CQ-1 and CQ-2. This Notice constitutes legal notification to all United States persons, as defined below, who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this data collection. United States persons who meet the reporting requirements but who do not receive a set of the revised C-forms and instructions should contact the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, to obtain copies. Additional copies of the reporting forms and instructions may be printed from the Internet at: <http://www.treas.gov/tic/forms.html>.

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any state), and any government (including a foreign government, the United States Government, a state, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: U.S. persons (a) who are U.S. residents and are not owned 50 percent or more by another U.S.-resident entity but (b) who are not depository institutions, bank holding companies, financial holding companies, or securities brokers and dealers subject to the requirements for filing TIC B reports, must report: on Form CQ-1, Part 1 if the total of their

reportable financial liabilities to foreigners (sections A and B) is \$50 million or more; on Form CQ-1, Part 2 if the total of their reportable financial claims on foreigners (sections A and B) is \$50 million or more; on Form CQ-2, Part 1 if the total of their reportable commercial liabilities to unaffiliated foreigners is \$25 million or more; on Form CQ-2, Part 2 if the total of their reportable commercial claims on unaffiliated foreigners is \$25 million or more. Provided, however, that insurance underwriting companies that are U.S. persons and that are subsidiaries of bank holding companies and financial holding companies are subject to the foregoing reporting requirements.

What to Report: These reports collect timely information on international portfolio capital movements vis-à-vis foreign countries and international and regional organizations as follows: Form CQ-1 collects information on reporter's financial liabilities to, and financial claims on, foreign residents; and Form CQ-2 collects information on reporter's commercial liabilities to, and commercial claims on, unaffiliated foreign residents.

How to Report: Copies of the reporting forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the statistics unit of the Federal Reserve Bank of New York at (212) 720-8037, e-mail: Patricia.Selvaggi@ny.frb.org. The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045-0001.

When to Report: Data on the revised TIC C-forms should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, beginning with the reporting period as of March 31, 2003 and thereafter.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505-0024. 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 OMB.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 02-29764 Filed 11-21-02; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Art Advisory Panel—Notice of Closed Meeting**

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held December 19, 2002.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on December 19, 2002, in Room 4200E beginning at 10 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

Karen Carolan C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694-1861 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on December 19, 2002, in Room 4200E beginning at 10 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

David B. Robison,

National Chief, Appeals.

[FR Doc. 02-29651 Filed 11-21-02; 8:45 am]

BILLING CODE 4830-01-M

Corrections

Federal Register

Vol. 67, No. 226

Friday, November 22, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

Correction

In rule document 02–26841 beginning on page 67742 in the issue of Wednesday, November 6, 2002, make the following correction:

§102–33.370 [Corrected]

On page 67757, in §102–33.370 (b), Table 2 is corrected to read as set forth below:

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–37 and 1027–33

[FPMR Amendment G–117]

RIN 3090–AH63

Management of Government Aircraft

TABLE 2 FOR DISPOSING OF INSTALLED LIFE-LIMITED PARTS

<p>(1) If a life-limited part is installed in an aircraft or an engine, and it— (i) Is documented with service life remaining—</p>	<p>Then</p>	<p>(A) You may exchange or sell the aircraft or engine, or GSA may transfer the aircraft or engine to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate the aircraft or engine for flight use; or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate it and mark it, “EXPIRED LIFE-LIMITED—NOT AIRWORTHY.” (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving donee agrees to remove and mutilate the part, and mark it (the State Agency for Surplus Property must certify that the part has been mutilated and marked)).</p>
<p>(ii) Is documented with no service life remaining, or undocumented—</p>	<p>Then</p>	<p>(A) You must remove and mutilate the part before you exchange or sell the aircraft or engine (see rules for disposing of uninstalled life-limited parts in Table 1 of paragraph (a) of this section). (Note: If an aircraft or engine is exchanged or sold to its OEM or PAH, you do not have to remove the expired life-limited part); (B) You must remove and mutilate it before GSA may transfer or donate the aircraft or engine for flight use (see the rules for disposing of uninstalled FSCAP in Table 1 in paragraph (a) of this section). (Note: An internal engine part may be left installed, if you identify the part individually to ensure that the receiving agency is aware of the part’s service status and, as a condition of the transfer or donation agreement, the receiving agency agrees to remove and mutilate the part before the engine is put into service. You must certify mutilation for transfers, and the State Agency for Surplus Property must certify that the part has been mutilated for donations); or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate and mark it “EXPIRED LIFE-LIMITED—NOT AIRWORTHY.” (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving agency agrees to remove and mutilate the part and mark it (the State Agency for Surplus Property must certify that the part has been mutilated and marked)).</p>



Federal Register

**Friday,
November 22, 2002**

Part II

Commission on Civil Rights

**45 CFR Chapter VII
Operations, Functions, and Structure of
Civil Rights Commission; Final Rule**

COMMISSION ON CIVIL RIGHTS**45 CFR Chapter VII****Operations, Functions, and Structure of Civil Rights Commission**

AGENCY: U.S. Commission on Civil Rights Commission.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations of the United States Commission on Civil Rights to provide the organizational structure, procedures, and program processes of the Commission.

EFFECTIVE DATE: This final rule is effective August 30, 2002.

FOR FURTHER INFORMATION: Contact Debra A. Carr, Deputy General Counsel, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Washington, DC 20425, (202) 376-8351.

SUPPLEMENTARY INFORMATION: On April 10, 2002, (97 FR 17528) the U.S. Commission on Civil Rights published its proposed rule for public comment. Comments and inquiries were received from two sources.

The inquiries generally concerned internal policies, practices and procedures of the Commission, many of which were not specifically related to the proposed revisions. In addition, there were inquiries and comments concerning the relationship, if any, between the Solicitor and the General Counsel; the impact of the proposed changes, if any, on current employees; the Commission's need for the revisions, as well as the process and timing.

The following information generally addresses the relevant and significant comments and inquiries received by the Commission: The United States General Accounting Office (GAO) conducted an audit of the Commission and issued a report in July 1997. The report noted that the Commission underwent a major reorganization in 1986, during which it eliminated several offices, including the Solicitor's Unit or Solicitor's Office. The GAO report further noted that the Commission has been operating under obsolete documentation of its operating structure, as reflected by regulations that have not been revised since 1985. Furthermore, the position of Solicitor has not been formally filled since 1995. Rather, for the past seven years, attorneys in the Office of General Counsel have been handling matters assigned to the Solicitor's Office under the outdated 1985 regulations. In 1998 the Commission approved changes to its regulations as recommended by GAO. The proposed revisions to the regulations published on April 10, 2002

in the **Federal Register** incorporate the GAO recommendations by reflecting the agency's organization, procedures, and practices. As such, the proposed regulations should not adversely impact any current Commission employee. Thus, after appropriate careful consideration of the comments and inquiries summarized above, the Commission determined that changes were not required for formulation of the final rule. The text of the final rule appears below.

List of Subjects*45 CFR Part 701*

Organization and functions (Government agencies).

45 CFR Part 702

Administrative practice and procedure, Sunshine Act.

45 CFR Part 703

Advisory committees, Organization and functions (Government agencies).

45 CFR Part 704

Freedom of information.

45 CFR Part 705

Privacy.

45 CFR Part 706

Conflict of interests.

45 CFR Part 707

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

45 CFR Part 708

Claims, Government employees.

Accordingly, 45 CFR chapter VII is revised as follows:

CHAPTER VII—COMMISSION ON CIVIL RIGHTS*Part*

- 701 Organization and functions of the Commission
- 702 Rules on hearings, reports, and meetings of the Commission
- 703 Operations and functions of State Advisory Committees
- 704 Information disclosure and communications
- 705 Materials available pursuant to 5 U.S.C. 552a
- 706 Employee responsibilities and conduct
- 707 Enforcement of nondiscrimination on the basis of disability in programs or activities conducted by U.S. Commission on Civil Rights
- 708 Collection by salary offset from indebted current and former employees

PART 701—ORGANIZATION AND FUNCTIONS OF THE COMMISSION**Subpart A—Organizations and Functions**

Sec.

701.1 Establishment.

701.2 Responsibilities.

Subpart B—Organization Statement

701.10 Membership of the Commission.

701.11 Commission meetings—duties of the Chairperson.

701.12 Staff Director.

701.13 Staff organization and functions.

Authority: 42 U.S.C. 1975, 1975a, 1975b.

Subpart A—Organizations and Functions**§ 701.1 Establishment.**

The United States Commission on Civil Rights (hereinafter referred to as the "Commission") is a bipartisan agency of the executive branch of the Government. The predecessor agency to the present Commission was established by the Civil Rights Act of 1957, 71 Stat. 634. This Act was amended by the Civil Rights Act of 1960, 74 Stat. 86; the Civil Rights Act of 1964, 78 Stat. 241; by 81 Stat. 582 (1967); by 84 Stat. 1356 (1970); by 86 Stat. 813 (1972); and by the Civil Rights Act of 1978, 92 Stat. 1067. The present Commission was established by the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301, as amended by the Civil Rights Commission Amendments Act of 1994, 108 Stat. 4339. The statutes are codified in 42 U.S.C. 1975 through 1975d. (Hereinafter, the 1994 Act will be referred to as "the Act.")

§ 701.2 Responsibilities.

(a) The Commission's authority under 42 U.S.C. 1975a(a) may be summarized as follows:

(1) To investigate allegations in writing under oath or affirmation that citizens of the United States are being deprived of their right to vote and have that vote counted by reason of color, race, religion, sex, age, disability, or national origin;

(2) To study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of color, race, religion, sex, age, disability or national origin or in the administration of justice;

(3) To appraise the laws and policies of the Federal Government relating to discrimination or denials of equal protection of the laws under the Constitution because of, color, race, religion, sex, age, disability, or national origin or in the administration of justice;

(4) To serve as a national clearinghouse for information relating to discrimination or denials of equal

protection of the laws because of color, race, religion, sex, age, disability, or national origin;

(5) To prepare public service announcements and advertising campaigns to discourage discrimination or denials of equal protection of the laws because of color, race, religion, sex, age, disability, or national origin.

(b) Under 42 U.S.C. 1975a(c), the Commission is required to submit at least one report annually that monitors Federal civil rights enforcement efforts in the United States and other such reports to the President and to the Congress at such times as the Commission, the Congress, or the President shall deem appropriate.

(c) In fulfilling these responsibilities the Commission is authorized by the Act to hold hearings and to issue subpoenas for the attendance of witnesses; to consult with governors, attorneys general; and other representatives of State and local governments, and private organizations; and is required to establish an advisory committee in each State. The Act also provides that all Federal agencies shall cooperate fully with the Commission so that it may effectively carry out its functions and duties.

Subpart B—Organization Statement

§ 701.10 Membership of the Commission.

(a) The Commission is composed of eight members (or "Commissioners"), not more than four of whom may be of the same political party. The President shall appoint four members, the President pro tempore of the Senate shall appoint two, and the Speaker of the House of Representatives shall appoint two.

(b) The Chairperson and Vice Chairperson of the Commission are designated by the President with the concurrence of a majority of the Commissioners. The Vice Chairperson acts as Chairperson in the absence or disability of the Chairperson or in the event of a vacancy in that office.

(c) No vacancy in the Commission affects its powers and any vacancy is filled in the same manner and is subject to the same limitations with respect to party affiliations as previous appointments.

(d) Five members of the Commission constitute a quorum.

§ 701.11 Commission meetings—duties of the Chairperson.

(a) At a meeting of the Commission in each calendar year, the Commission shall, by vote of the majority, adopt a schedule of Commission meetings for the following calendar year.

(b) In addition to the regularly scheduled meetings, it is the responsibility of the Chairperson to call the Commission to meet in a special open meeting at such time and place as he or she shall deem appropriate; provided however, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairperson.

(c) The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.

(d) In the event that after consulting with the members of the Commission and consideration of the views of the members the Chairperson determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairperson may cancel such meeting.

§ 701.12 Staff Director.

A Staff Director for the Commission is appointed by the President with the concurrence of a majority of the Commissioners. The Staff Director is the administrative head of the agency.

§ 701.13 Staff organization and functions.

The Commission staff organization and function are as follows:

(a) *Office of the Staff Director.* Under the direction of the Staff Director, this Office defines and disseminates to staff the policies established by the Commissioners; develops program plans for presentation to the Commissioners; evaluates program results; supervises and coordinates the work of other agency offices; manages the administrative affairs of the agency; appoints an Equal Employment Opportunity Officer for the agency's in-house Equal Employment Opportunity Program; and conducts agency liaison with the Executive Office of the President, the Congress, and other Federal agencies.

(b) *Office of the Deputy Staff Director.* Under the direction of the Deputy Staff Director, this Office is responsible for the day-to-day administration of the agency; evaluation of quantity and quality of program efforts; personnel administration; and the supervision of Office Directors who do not report directly to the Staff Director.

(c) *Office of the General Counsel.* Under the direction of the General Counsel, who reports directly to the

Staff Director, this office serves as legal counsel to the Commissioners and to the agency; legal aspects of agency-related personnel actions, employment issues, and labor relations issues; plans and conducts hearings and consultations for the Commission; conducts legal studies; prepares reports of legal studies and hearings; drafts or reviews proposals for legislative and executive action; receives and responds to requests for material under the Freedom of Information Act, Federal Advisory Committee Act, Administrative Procedures Act, and the Sunshine Act; serves as the agency's ethics office and responds to requests for advice and guidance on questions of ethical conduct, conflicts of interest, and reporting financial interest; and reviews all agency publications and congressional testimony for legal sufficiency.

(d) *Office of Management.* This Office is responsible for all administrative, management, and facilitative services necessary for the operation of the agency, including financial management, personnel, publications, and the National Clearinghouse Library. This office consists of three divisions reporting directly to the Staff Director.

(1) *Administrative Services and Clearinghouse Division.* Under the direction of the Chief of Administrative Services, this Division is responsible for the identification and acquisition of Commission hearing facilities; oversight of the Rankin Library and the distribution of publications; procurement; information and resources management; security; telecommunications; transportation; space management; repair and maintenance services; supplies; central mailing lists; and assorted other administrative duties and functions;

(2) *Budget and Finance Division.* Under the direction of the Chief of Budget and Finance, this Division is responsible for budget preparation, formulation, justification, and execution; financial management; and accounting, including travel for Commissioners and staff; and

(3) *Human Resources Division.* Under the direction of the Director of Human Resources, this Division is responsible for human resources development, including career staffing, classification, benefits, time and attendance, training, and compensation.

(e) *Office of Federal Civil Rights Evaluation.* Under the direction of an Assistant Staff Director, this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for

programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights to Federal agencies having appropriate jurisdiction; and receiving complaints alleging denial of civil rights because of color, race, religion, sex, age, disability, or national origin and referring these complaints to the appropriate government agency for investigation and resolution.

(f) *Congressional Affairs Unit*. This Unit is responsible for liaison with committees and members of Congress or their staffs, monitoring legislative activities relating to civil rights, and preparing testimony for presentation before committees of Congress when such testimony has been requested by a committee.

(g) *Public Affairs Unit*. Under the direction of the Chief of Public Affairs, this Unit is responsible for planning and managing briefings at which the Commission receives information regarding civil rights issues; developing plans for community outreach activities; managing the Commission's public service announcements; media releases and press conferences; preparing for publication periodic updates of Commission activities and a Commission civil rights magazine; and keeping the Commission and Commission staff apprised of civil rights conferences and activities.

(h) *Regional Programs Coordination Unit*. Under the direction of the Chief of the Regional Programs Coordination Unit, this Unit is responsible for directing and coordinating the programs and work of the regional offices and 51 State Advisory Committees to the Commission and maintaining liaison between the regional offices and the various headquarters' offices of the Commission.

(i) *Regional Offices*. The Commission has six regional offices, each headed by a Director, that coordinate studies and fact-finding activities on a variety of civil rights issues addressed by the State Advisory Committees (SAC) in their regions and approved by the Staff Director; report to the Commission on the results of SAC activities; submit SAC reports to the Commission for action; and assist with follow-up on recommendations included in SAC or Commission reports. The name of the Director, the address, and telephone and facsimile numbers for each regional office are published annually in the "United States Government Manual". The regions and the SACs that they serve are:

Region I: Eastern Regional Office, Washington, DC

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, Virginia, West Virginia.

Region II: Southern Regional Office, Atlanta, Georgia

Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee.

Region III: Midwestern Regional Office, Chicago, Illinois

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region IV: Central Regional Office, Kansas City, Kansas

Alabama, Arkansas, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, and Oklahoma.

Region V: Rocky Mountain Regional Office, Denver, Colorado

Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming.

Region VI: Western Regional Office, Los Angeles, California

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas, and Washington.

PART 702—RULES ON HEARINGS, REPORTS, AND MEETINGS OF THE COMMISSION

Subpart A—Hearings and Reports

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Authority: 42 U.S.C. 1975, 1975a, 1975b.

Subpart A—Hearings and Reports

§ 702.1 Definitions.

For purposes of this part, the following definitions shall apply unless otherwise provided:

(a) *The Act* means the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301, as amended by the Civil Rights Commission Amendments Act of 1994, 108 Stat. 4339, codified in 42 U.S.C. 1975 through 1975d.

(b) *The Commission* means the United States Commission on Civil Rights or, as provided in § 702.2, to any authorized subcommittee thereof.

(c) *The Chairperson* means the Chairperson of the Commission or authorized subcommittee thereof or to any acting Chairperson of the Commission or of such subcommittee.

(d) *Proceeding* means collectively to any public session of the Commission and executive session held in connection therewith.

(e) *Hearing* means collectively to a public session of the Commission and any executive session held in connection therewith, including the attendance of witnesses or the production of written or other matters for which subpoenas have been issued.

(f) *Witnesses* are persons subpoenaed to attend and testify or produce written or other matter.

(g) *The rules in this part* means the Rules on Hearings of the Commission.

(h) *Report* means statutory reports or portions thereof issued pursuant to 42 U.S.C. 1975a(c).

(i) *Verified answer* means an answer the truth of which is substantiated by oath or affirmation attested to by a notary public or other person who has legal authority to administer oaths.

§ 702.2 Authorization for hearing.

Under 42 U.S.C. 1975a(e)(1) the Commission or, on the authorization of the Commission, any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of the Act, hold such hearings and act at such times and locations as the Commission or such authorized subcommittee may deem advisable. The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to this section must be approved by a majority of the Commission or by a majority of the members present at a meeting at which at least a quorum of five members is present.

§ 702.3 Notice of hearing.

At least 30 days prior to the commencement of any hearing, the

Commission shall publish in the **Federal Register** notice of the date on which such hearing is to commence, the location at which it is to be held, and the subject of the hearing.

§ 702.4 Subpoenas.

(a) Subpoenas for the attendance and testimony of witnesses or the production of written or other matter may be issued by the Commission over the signature of the Chairperson and may be served by any person designated by the Chairperson.

(b) A witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the rules in this part at the time of service of the subpoena.

(c) The Commission may issue subpoenas for the attendance and testimony of witnesses or for the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the location wherein the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

(d) The Chairperson shall receive and the Commission shall dispose of requests to subpoena additional witnesses except as otherwise provided in § 702.6(e).

(e) Requests for subpoenas shall be in writing, supported by a showing of the general relevance and materiality of the evidence sought. Witness fees and mileage shall be computed and paid pursuant to § 702.15.

(f) Subpoenas shall be issued at a reasonably sufficient time in advance of their scheduled return, in order to give subpoenaed persons an opportunity to prepare for their appearance and to employ counsel, should they so desire.

(g) No subpoenaed document or information contained therein shall be made public unless it is introduced into and received as part of the official record of the hearing.

§ 702.5 Conduct of proceedings.

(a) The Chairperson shall announce in an opening statement the subject of the proceedings.

(b) Following the opening statement, the Commission shall first convene in executive session if one is required pursuant to the provisions of § 702.6.

(c) The Chairperson, subject to the approval of the Commission, shall:

- (1) Set the order of presentation of evidence and appearance of witnesses;
- (2) Rule on objections and motions;
- (3) Administer oaths and affirmations;
- (4) Make all rulings with respect to the introduction into or exclusion from

the record of documentary or other evidence;

(5) Regulate the course and decorum of the proceedings and the conduct of the parties and their counsel to ensure that the proceedings are conducted in a fair and impartial manner.

(d) Proceedings shall be conducted with reasonable dispatch and due regard shall be had for the convenience and necessity of witnesses.

(e) The questioning of witnesses shall be conducted only by Members of the Commission, by authorized Commission staff personnel, or by counsel to the extent provided in § 702.7.

(f) In addition to persons served with a copy of the rules in this part pursuant to §§ 702.4 and 702.6, a copy of the rules in this part will be made available to all witnesses.

(g) The Chairperson may punish breaches of order and decorum by censure and exclusion from the proceedings.

§ 702.6 Executive session.

(a) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session.

(b) The Commission shall afford any persons defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by them, before deciding to use such evidence or testimony.

(1) Such person shall be served with notice, in writing, at least 10 days prior to the date, time, and location for the appearance of witnesses at executive session or where service is by mail at least 14 days prior to such date. This notice shall be accompanied by a copy of the rules in this part and by a brief summary of the information that the Commission has determined may tend to defame, degrade, or incriminate such person;

(2) The notice, summary, and rules in this part shall be served by certified mail or by leaving a copy thereof at the last known residence or business address of such person; and

(3) The date of service, for purposes of this section, shall be the day when the material is deposited in the mail or is delivered in person, whichever is applicable. When service is made by mail, the return post office receipt shall be proof of service; in all other cases, the acknowledgment of the party served

or the verified return of the one making service shall be proof of the same.

(c) If a person receiving notice under this section notifies the Commission within five days of service of such notice or where service is by mail within eight days of service of such notice that the scheduled appearance constitutes a hardship, the Commission may, in its discretion, set a new date or time for such person's appearance at the executive session.

(d) In the event such persons fail to appear at executive session at the time and location scheduled under paragraph (b) or (c) of this section, they shall not be entitled to another opportunity to appear at executive session, except as provided in § 702.11.

(e) If such persons intend to submit sworn statements of themselves or others, or if they intend that witnesses appear in their behalf at executive session, they shall, no later than 48 hours prior to the time set under paragraph (b) or (c) of this section, submit to the Commission all such statements and a list of all witnesses. The Commission will inform such persons whether the number of witnesses requested is reasonable within the meaning of paragraph (b) of this section. In addition, the Commission will receive and dispose of requests from such persons to subpoena other witnesses. Requests for subpoenas shall be made sufficiently in advance of the scheduled executive session to afford subpoenaed persons reasonable notice of their obligation to appear at that session. Subpoenas returnable at executive session shall be governed by the provisions of § 702.4.

(f) Persons for whom an executive session has been scheduled, and persons compelled to appear at such session, may be represented by counsel at such session to the extent provided by § 702.7.

(g) Attendance at executive session shall be limited to Commissioners; authorized Commission staff personnel; witnesses, and their counsel at the time scheduled for their appearance; and such other persons whose presence is requested or consented to by the Commission.

(h) In the event the Commission determines to release or to use evidence or testimony that it has determined may tend to defame, degrade, or incriminate any persons in such a manner as to reveal publicly their identity, such evidence or testimony, prior to such public release or use, will be presented at a public session, and the Commission will afford them an opportunity to appear as voluntary witnesses or to file a sworn statement in their own behalf

and to submit brief and pertinent sworn statements of others.

§ 702.7 Counsel.

(a) Persons compelled to appear in person before the Commission and any witness appearing at a public session of the Commission will be accorded the right to be accompanied and advised by counsel, who will have the right to subject their clients to reasonable examination, make objections on the record, and briefly argue the basis for such objections.

(b) For the purpose of this section, counsel shall mean an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State or Territory of the United States.

(c) Failure of any persons to obtain counsel shall not excuse them from attendance in response to a subpoena, nor shall any persons be excused in the event their counsel is excluded from the proceeding pursuant to § 702.6(g). In the latter case, however, such persons shall be afforded a reasonable time to obtain other counsel, said time to be determined by the Commission.

§ 702.8 Evidence at Commission proceedings.

(a) The rules of evidence prevailing in courts of law or equity shall not control proceedings of the Commission.

(b) Where a witness testifying at a public session of a hearing or a session for return of subpoenaed documents offers the sworn statements of other persons, such statements, in the discretion of the Commission, may be included in the record, provided they are received by the Commission 24 hours in advance of the witness' appearance.

(c) The prepared statement of a witness testifying at a public session of a hearing, in the discretion of the Commission, may be placed into the record, provided that such statement is received by the Commission 24 hours in advance of the witness' appearance.

(d) In the discretion of the Commission, evidence may be included in the record after the close of a public session of a hearing provided the Commission determines that such evidence does not tend to defame, degrade, or incriminate any person.

(e) The Commission will determine the pertinence of testimony and evidence adduced at its proceedings and may refuse to include in the record of a proceeding or may strike from the record any evidence it considers to be cumulative, immaterial, or not pertinent.

§ 702.9 Cross-examination at public session.

If the Commission determines that oral testimony of a witness at a public session tends to defame, degrade, or incriminate any person, such person, or through counsel, shall be permitted to submit questions to the Commission in writing, which, in the discretion of the Commission, may be put to such witness by the Chairperson or by authorized Commission staff personnel.

§ 702.10 Voluntary witnesses at public session of a hearing.

A person who has not been subpoenaed and who has not been afforded an opportunity to appear pursuant to § 702.6 may be permitted, in the discretion of the Commission, to make an oral or written statement at a public session of a hearing. Such person may be questioned to the same extent and in the same manner as other witnesses before the Commission.

§ 702.11 Special executive session.

If, during the course of a public session, evidence is submitted that was not previously presented at executive session and that the Commission determines may defame, degrade, or incriminate any person, the provisions of § 702.6 shall apply and such extensions, recesses or continuances of the public session shall be ordered by the Commission, as it deems necessary. The time and notice requirements of § 702.6 may be modified by the Commission provided reasonable notice of a scheduled executive session is afforded such person; the Commission may, in its discretion, strike such evidence from the record, in which case the provisions of § 702.6 shall not apply.

§ 702.12 Contempt of the Commission.

Proceedings and process of the Commission are governed by 42 U.S.C. 1975a(e)(2), which provides that in case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

§ 702.13 Intimidation of witnesses.

Witnesses at Commission proceedings are protected by the provisions of 18 U.S.C. 1505, which provide that whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to

written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress shall be fined under this title or imprisoned not more than five years, or both.

§ 702.14 Transcript of Commission proceedings.

(a) An accurate transcript shall be made of the testimony of all witnesses at all proceedings of the Commission. Transcripts shall be recorded solely by the official reporter or by any other person or means designated by the Commission.

(b) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that witnesses in a hearing held in executive session may be limited, for good cause, to inspection of the official transcript of their testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof.

(c) Persons who have presented testimony at a proceeding may ask within 60 days after the close of the proceeding to correct errors in the transcript of their testimony. Such requests shall be granted only to make the transcript conform to their testimony as presented at the proceeding.

§ 702.15 Witness fees.

A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments must be tendered at the witness' request upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

§ 702.16 Attendance of news media at public sessions.

Reasonable access for coverage of public sessions shall be provided to the various communications media, including newspapers, magazines, radio, newsreels, and television, subject

to the physical limitations of the room in which the session is held and consideration of the physical comfort of Commission members, staff, and witnesses. However, no witnesses shall be televised, filmed, or photographed during the session nor shall the testimony of any witness be broadcast or recorded for broadcasting if the witness objects.

§ 702.17 Communications with respect to Commission proceedings.

During any proceeding held outside Washington, DC, communications to the Commission with respect to such proceeding must be made to the Chairperson or authorized Commission staff personnel in attendance. All requests for subpoenas returnable at a hearing, requests for appearance of witnesses at a hearing, and statements or other documents for inclusion in the record of a proceeding, required to be submitted in advance, must be submitted to the Chairperson, or such authorized person as the Chairperson may appoint, at an office located in the community where such hearing or proceeding is scheduled to be held. The location of such office will be set forth in all subpoenas issued under the rules in this part and in all notices prepared pursuant to § 706.2.

§ 702.18 Commission reports.

(a) If a Commission report tends to defame, degrade, or incriminate any person, the report or relevant portions thereof shall be delivered to such person at least 30 days before the report is made public to allow such person to make a timely verified answer to the report. The Commission shall afford such person an opportunity to file with the Commission a verified answer to the report or relevant portions thereof not later than 20 days after service as provided by the regulations in this part.

(1) Such person shall be served with a copy of the report or relevant portions thereof, with an indication of the section(s) that the Commission has determined tend to defame, degrade, or incriminate such person, a copy of the Act, and a copy of the regulations in this part.

(2) The report or relevant portions thereof, the Act, and regulations in this part shall be served by certified mail, return receipt requested, or by leaving a copy thereof at the last known residence or business address or the agent of such person.

(3) The date of service for the purposes of this section shall be the day the material is delivered either by the post office or otherwise, to such person or the agent of such person or at the last

known residence or business address of such person. The acknowledgement of the party served or the verified return of the one making service shall be proof of service except that when service is made by mail, the return post office receipt shall also constitute proof of same.

(b) If a person receiving a Commission report or relevant portions thereof under this part requests an extension of time from the Commission within seven days of service of such report, the Commission may, upon a showing of good cause, grant the person additional time within which to file a verified answer.

(c) A verified answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report.

(d) Such verified answer shall be published as an appendix to the report; however, the Commission may except from the answer such matter as it determines to be scandalous, prejudicial, or unnecessary.

Subpart B—Meetings

§ 702.50 Purpose and scope.

This subpart contains the regulations of the United States Commission on Civil Rights implementing sections (a)–(f) of 5 U.S.C. 552b, the “Government in the Sunshine Act.” They are adopted to further the principle that the public is entitled to the fullest practicable information regarding the decision-making processes of the Commission. They open meetings of the Commission to public observation except where the rights of individuals are involved or the ability of the Commission to carry out its responsibilities requires confidentiality.

§ 702.51 Definitions.

(a) *Commission* means the United States Commission on Civil Rights and any subcommittee of the Commission authorized under the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301, as amended by the Civil Rights Commission Amendments Act of 1994, 108 Stat. 4339. The statutes are codified in 42 U.S.C. 1975 through 1975d.

(b) *Commissioner* means a member of the U.S. Commission on Civil Rights appointed by the President, the President pro tempore of the Senate, or the Speaker of the House of Representatives, as provided in 42 U.S.C. 1975.

(c) *Meeting* means the deliberations of at least the number of Commissioners required to take action on behalf of the

Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(1) The number of Commissioners required to take action on behalf of the Commission is four, except that such number is two when the Commissioners are a subcommittee of the Commission authorized under 42 U.S.C. 1975a(e)(1).

(2) Deliberations among Commissioners regarding the setting of the time, location, or subject matter of a meeting, whether the meeting is open or closed, whether to withhold information discussed at a closed meeting, and any other deliberations required or permitted by 5 U.S.C. 552b (d) and (e) and § 702.54 and § 702.55 of this subpart, are not meetings for the purposes of this subpart.

(3) The consideration by Commissioners of Commission business that is not discussed through conference calls or a series of two party calls by the number of Commissioners required to take action on behalf of the Commission is not a meeting for the purposes of this subpart.

(d) *Public announcement or publicly announce* means the use of reasonable methods, such as the posting on the Commission's website or public notice bulletin boards and the issuing of press releases, to communicate information to the public regarding Commission meetings.

(e) *Staff Director* means the Staff Director of the Commission.

§ 702.52 Open meeting requirements.

(a) Every portion of every Commission meeting shall be open to public observation, except as provided in § 702.53 of this subpart. Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this subpart.

(b) This subpart gives the public the right to attend and observe Commission open meetings; it confers no right to participate in any way in such meetings.

(c) The Staff Director shall be responsible for making physical arrangements for Commission open meetings that provide ample space, sufficient visibility, and adequate acoustics for public observation.

(d) The presiding Commissioner at an open meeting may exclude persons from a meeting and shall take all steps necessary to preserve order and decorum.

§ 702.53 Closed meetings.

(a) The Commission may close a portion or portions of a meeting and withhold information pertaining to such meeting when it determines that the

public interest does not require otherwise and when such portion or portions of a meeting or the disclosure of such information is likely to:

- (1) Disclose matters that are:
 - (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and
 - (ii) In fact properly classified pursuant to such Executive Order;
- (2) Disclose information relating solely to the internal personnel rules and practices of the Commission;
- (3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:
 - (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
 - (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) Disclose trade secrets and commercial or financial information obtained from a person and is privileged or confidential;
- (5) Involve accusing any person of a crime or formally censuring any person;
- (6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (7) Disclose investigatory records compiled for law enforcement purposes, or information that if written would be contained in such records, but only to the extent that the production of such records or information would:
 - (i) Interfere with enforcement proceedings,
 - (ii) Deprive a person of a right to a fair trial or an impartial adjudication,
 - (iii) Constitute an unwarranted invasion of personal privacy,
 - (iv) Disclose the identity of a confidential source and, in the case of a record received by the Commission from a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,
 - (v) Disclose investigative techniques and procedures, or
 - (vi) Endanger the life or physical safety of law enforcement personnel;
- (8) Disclose information received by the Commission and contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;
- (9) Disclose information the premature disclosure of that would:

(i) In the case of information received by the Commission from an agency that regulates currencies, securities, commodities, or financial institutions, be likely to:

- (A) Lead to significant financial speculation in currencies, securities, or commodities, or
 - (B) Significantly endanger the stability of any financial institution; or
- (ii) Be likely to significantly frustrate implementation of a proposed action, except that this paragraph shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or
- (10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.
- (b) [Reserved]

§ 702.54 Closed meeting procedures.

(a) A meeting or portion thereof will be closed, and information pertaining to a closed meeting will be withheld, only after four Commissioners when no Commissioner's position is vacant, three Commissioners when there is a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(e)(1), vote to take such action.

(b)(1) A separate vote shall be taken with respect to each meeting, a portion or portions of which are proposed to be closed to the public under § 702.53, and with respect to any information to be withheld under § 702.53.

(2) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as:

- (i) Each meeting in such series involves the same particular matters, and
- (ii) Is scheduled to be held no more than thirty (30) days after the initial meeting in such series.

(c) The Commission will vote on the question of closing a meeting or portion thereof and withholding information under paragraph (b) of this section if one Commissioner calls for such a vote. The vote of each Commissioner participating in a vote to close a meeting shall be recorded and no proxies shall be allowed.

(1) If such vote is against closing a meeting and withholding information,

the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner.

(2) If such vote is for closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner, and:

(i) A full written explanation of the decision to close the meeting or portions thereof (such explanation will be as detailed as possible without revealing the exempt information);

(ii) A list of all persons other than staff members expected to attend the meeting and their affiliation (the identity of persons expected to attend such meeting will be withheld only if revealing their identity would reveal the exempt information that is the subject of the closed meeting).

(d) Prior to any vote to close a meeting or portion thereof under paragraph (c) of this section, the Commissioners shall obtain from the General Counsel an opinion as to whether the closing of a meeting or portions thereof is in accordance with paragraphs (a)(1) through (10) of § 702.53.

(1) For every meeting closed in accordance with paragraphs (a)(1) through (10) of § 702.53, the General Counsel shall publicly certify in writing that, in his or her opinion, the meeting may be closed to the public and shall cite each relevant exemptive provision.

(2) A copy of certification by the General Counsel together with a statement from the presiding officer of the closed meeting setting forth the time and location of the meeting and the persons present, shall be retained by the Commission.

(e) For all meetings closed to the public, the Commission shall maintain a complete verbatim transcript or electronic recording adequate to record fully the proceedings of each meeting or portion of a meeting, which sets forth the time and location of the meeting and the persons present. In the case of a meeting or a portion of a meeting closed to the public pursuant to paragraphs (a)(8), (9)(i)(A), or (10) of § 702.53, the Commission may retain a set of minutes and such minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on

the question). All documents considered in connection with any action shall be identified in such minutes.

(f) Any person whose interests may be directly affected by a portion of a meeting may request that such portion be closed to the public under § 702.53 or that it be open to the public if the Commission has voted to close the meeting pursuant to § 702.53(a)(5), (6) or (7). The Commission will vote on the request if one Commissioner asks that a vote be taken. Such requests shall be made to the Staff Director within a reasonable amount of time after the meeting or vote in question is publicly announced.

§ 702.55 Public announcement of meetings.

(a) *Agenda.* The Staff Director shall set as early as possible but in any event at least eight calendar days before a meeting, the time, location, and subject matter for the meeting. Agenda items will be identified in adequate detail to inform the general public of the specific business to be discussed at the meeting.

(b) *Notice.* The Staff Director, at least eight calendar days before a meeting, shall make public announcement of:

- (1) The time of the meeting;
- (2) Its location;
- (3) Its subject matter;
- (4) Whether it is open or closed to the public; and
- (5) The name and phone number of a Commission staff member who will respond to requests for information about the meeting.

(c) *Changes.* (1) The time of day or location of a meeting may be changed following the public announcement required by paragraph (b) of this section, if the Staff Director publicly announces such change at the earliest practicable time subsequent to the decision to change the time of day or location of the meeting.

(2) The date of a meeting may be changed following the public announcement required by paragraph (b) of this section, or a meeting may be scheduled less than eight calendar days in advance, if:

(i) Four Commissioners when no Commissioner's position is vacant, three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(d), determine by recorded vote that Commission business requires such a meeting at an earlier date; and

(ii) The Staff Director, at the earliest practicable time following such vote, makes public announcement of the time, location, and subject matter of such meeting and whether it is open or closed to the public.

(3) The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to the public may be changed following the public announcement required by paragraph (b) of this section if:

(i) Four Commissioners when no Commissioner's position is vacant, three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(e)(1) determine by recorded vote that Commission business so requires; and

(ii) The Staff Director publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time subsequent to the decision to make such change.

(d)(1) **Federal Register.** Immediately following all public announcements required by paragraphs (b) and (c) of this section, notice of the time, location, and subject matter of a meeting, whether the meeting is open or closed to the public, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about meeting, shall be submitted for publication in the **Federal Register**.

(2) Notice of a meeting will be published in the **Federal Register** even after the meeting that is the subject of the notice has occurred in order to provide a public record of all Commission meetings.

§ 702.56 Records.

(a) The Commission shall promptly make available to the public in an easily accessible place at Commission headquarters the following materials:

(1) A copy of the certification by the General Counsel required by § 702.54(e)(1).

(2) A copy of all recorded votes required to be taken by these rules.

(3) A copy of all announcements published in the **Federal Register** pursuant to this subpart.

(4) Transcripts, electronic recordings, and minutes of closed meetings determined not to contain items of discussion or information that may be withheld under § 702.53. Copies of such material will be furnished to any person at the actual cost of transcription or duplication.

(b)(1) Requests to review or obtain copies of records compiled under this Act, other than transcripts, electronic recordings, or minutes of a closed meeting, will be processed under the Freedom of Information Act and, where applicable, the Privacy Act regulations of the Commission (parts 704 and 705,

respectively, of this title). Nothing in this subpart expands or limits the present rights of any person under the rules in this part with respect to such requests.

(2) Requests to review or obtain copies of transcripts, electronic recordings, or minutes of a closed meeting maintained under § 702.54(e) and not released under paragraph (a)(4) of this section shall be directed to the Staff Director who shall respond to such requests within ten (10) working days.

(c) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of two years after such meeting or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 702.57 Administrative review.

Any person who believes a Commission action governed by this subpart to be contrary to the provisions of this subpart shall file an objection in writing with the Staff Director specifying the violation and suggesting corrective action. Whenever possible, the Staff Director shall respond within ten (10) working days of the receipt of such objections.

PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

Sec.

- 703.1 Name and establishment.
- 703.2 Functions.
- 703.3 Scope of subject matter.
- 703.4 Advisory Committee Management Officer.
- 703.5 Membership.
- 703.6 Officers.
- 703.7 Subcommittees—Special assignments.
- 703.8 Meetings.
- 703.9 Reimbursement of members.
- 703.10 Public availability of documents and other materials.

Authority: 42 U.S.C. 1975a(d).

§ 703.1 Name and establishment.

Pursuant to 42 U.S.C. 1975a(d), the Commission has chartered and maintains Advisory Committees to the Commission in each State, and the District of Columbia. All relevant provisions of the Federal Advisory Committee Act of 1972 (Public Law 92-463, as amended) are applicable to the management, membership, and operations of such committees and subcommittees thereof.

§ 703.2 Functions.

Under the Commission's charter each Advisory Committee shall:

(a) Advise the Commission in writing of any knowledge or information it has of any alleged deprivation of the right to vote and to have the vote counted by reason of color, race, religion, sex, age, disability, or national origin, or that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination;

(b) Advise the Commission concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws;

(c) Advise the Commission upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress;

(d) Receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the Advisory Committee;

(e) Initiate and forward advice and recommendations to the Commission upon matters that the Advisory Committee has studied;

(f) Assist the Commission in the exercise of its clearinghouse function and with respect to other matters that the Advisory Committee has studied;

(g) Attend, as observers, any open hearing or conference that the Commission may hold within the State.

§ 703.3 Scope of subject matter.

The scope of the subject matter to be dealt with by Advisory Committees shall be those subjects of inquiry or study with which the Commission itself is authorized to investigate, pursuant to 42 U.S.C. 1975(a). Each Advisory Committee shall confine its studies to the State covered by its charter. It may, however, subject to the requirements of § 703.4, undertake to study, within the limitations of the Act, subjects other than those chosen by the Commission for study.

§ 703.4 Advisory Committee Management Officer.

(a) The Chief of the Regional Programs Coordination Unit is designated as Advisory Committee Management Officer pursuant to the requirements of the Federal Advisory Committee Act of 1972 (Public Law 92-463, as amended).

(b) Such Officer shall carry out the functions specified in section 8(b) of the Federal Advisory Committee Act.

(c) Such Officer shall, for each Advisory Committee, appoint a Commission employee to provide services to the Committee and to be responsible for supervising the activity of the Committee pursuant to section 8 of the Federal Advisory Committee Act. The employee is subject to the supervision of the Regional Director of the Commission responsible for the State within which said Committee is chartered.

§ 703.5 Membership.

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each Advisory Committee shall consist of at least 11 members appointed by the Commission. Members of the Advisory Committees shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the charter, provided that members of the Advisory Committee may, at any time, be removed by the Commission.

(b) Membership on the Advisory Committee shall be reflective of the different ethnic, racial, and religious communities within each State and the membership shall also be representative with respect to sex, political affiliation, age, and disability status.

§ 703.6 Officers.

(a) The officers of each Advisory Committee shall be a Chairperson, Vice Chairperson, and such other officers as may be deemed advisable.

(b) The Chairperson shall be appointed by the Commission.

(c) The Vice Chairperson and other officers shall be elected by the majority vote of the full membership of the Committee.

(d) The Chairperson, or in his or her absence the Vice Chairperson, under the direction of the Commission staff member appointed pursuant to § 703.4(b) shall:

(1) Call meetings of the Committee;

(2) Preside over meetings of the Committee;

(3) Appoint all subcommittees of the Committee;

(4) Certify for accuracy the minutes of Committee meetings prepared by the assigned Commission staff member; and

(5) Perform such other functions as the Committee may authorize or the Commission may request.

§ 703.7 Subcommittees—Special assignments.

Subject to the approval of the designated Commission employee, an Advisory Committee may:

(a) Establish subcommittees, composed of members of the

Committee, to study and report upon matters under consideration and authorize such subcommittees to take specific action within the competence of the Committee; and

(b) Designate individual members of the Committee to perform special projects involving research or study on matters under consideration by the Committee.

§ 703.8 Meetings.

(a) Meetings of a Committee shall be convened by the designated Commission employee or subject to his or her approval by the Chairperson or a majority of the Advisory Committee members. The agenda for such Committee or subcommittee meeting shall be approved by the designated Commission employee.

(b) A quorum shall consist of one-half or more of the members of the Committee, or five members, whichever is the lesser, except that with respect to the conduct of fact-finding meetings as authorized in paragraph (e) of this section, a quorum shall consist of three members.

(c) Notice of all meetings of an Advisory Committee shall be given to the public.

(1) Notice shall be published in the **Federal Register** at least 15 days prior to the meetings, provided that in emergencies such requirement may be waived.

(2) Notice of meetings shall be provided to the public by press releases and other appropriate means.

(3) Each notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the date, time, and location of such meeting.

(d) Except as provided for in paragraph (d)(1) of this section, all meetings of Advisory Committees or subcommittees shall be open to the public.

(1) The Chief of the Regional Programs Coordination Unit may authorize a Committee or subcommittee to hold a meeting closed to the public if he or she determines that the closing of such meeting is in the public interest provided that prior to authorizing the holding of a closed meeting the Chief of the Regional Programs Coordination Unit has requested and received the opinion of the General Counsel with respect to whether the meeting may be closed under one or more of the exemptions provided in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

(2) In the event that any meeting or portion thereof is closed to the public, the Committee shall publish, at least annually, in summary form a report of

the activities conducted in meetings not open to the public.

(e) Advisory Committees and subcommittees may hold fact-finding meetings for the purpose of inviting the attendance of and soliciting information and views from government officials and private persons respecting subject matters within the jurisdiction of the Committee or subcommittee.

(f) Any person may submit a written statement at any business or fact-finding meeting of an Advisory Committee or subcommittee.

(g) At the discretion of the designated Commission employee or his or her designee, any person may make an oral presentation at any business or fact-finding meeting, provided that such presentation will not defame, degrade, or incriminate any other person as prohibited by the Act.

§ 703.9 Reimbursement of members.

(a) Advisory Committee members may be reimbursed by the Commission by a per diem subsistence allowance and for travel expenses at rates not to exceed those prescribed by Congress for Government employees, for the following activities only:

(1) Attendance at meetings, as provided for in § 703.8; and

(2) Any activity specifically requested and authorized by the Commission to be reimbursed.

(b) Members will be reimbursed for the expense of travel by private automobile on a mileage basis only to the extent such expense is no more than that of suitable public transportation for the same trip unless special circumstances justify the additional expense of travel by private automobile.

§ 703.10 Public availability of documents and other materials.

Part 704 of this chapter shall be applicable to reports, publications, and other materials prepared by or for Advisory Committees.

PART 704—INFORMATION DISCLOSURE AND COMMUNICATIONS

Sec.

704.1 Material available pursuant to 5 U.S.C. 552.

704.2 Complaints.

704.3 Other requests and communications.

704.4 Restrictions on disclosure of information.

Authority: 5 U.S.C. 552, 552a, 552b.

§ 704.1 Material available pursuant to 5 U.S.C. 552.

(a) *Purpose, scope, and definitions.* (1) This section contains the regulations of the United States Commission on Civil Rights implementing the Freedom of

Information Act, 5 U.S.C. 552. These regulations inform the public with respect to where and how records and information may be obtained from the Commission. Officers and employees of the Commission shall make Commission records available under 5 U.S.C. 552 only as prescribed in this section. Nothing contained in this section, however, shall be construed to prohibit officers or employees of the Commission from routinely furnishing information or records that are customarily furnished in the regular performance of their duties.

(2) For the purposes of this part the following terms are defined as indicated:

Commission means the United States Commission on Civil Rights;

FOIA means Freedom of Information Act, 5 U.S.C. 552;

FOIA Request means a request in writing, for records pursuant to 5 U.S.C. 552, which meets the requirements of paragraph (d) of this part. This part does not apply to telephone or other oral communications or requests not complying with paragraph (d)(1)(i) of this section.

Office of the General Counsel means the General Counsel of the Commission or his or her designee;

Staff Director means the Staff Director of the Commission.

(b) *General policy.* In order to foster the maximum participation of an informed public in the affairs of Government, the Commission will make the fullest possible disclosure of its identifiable records and information consistent with such considerations as those provided in the exemptions of 5 U.S.C. 552 that are set forth in paragraph (f) of this section.

(c) *Material maintained on file pursuant to 5 U.S.C. 552(a)(2).* Material maintained on file pursuant to 5 U.S.C. 552(a)(2) shall be available for inspection during regular business hours at the offices of the Commission at 624 9th Street, NW., Washington, DC 20425. Copies of such material shall be available upon written request, specifying the material desired, addressed to the Office of the General Counsel, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, and upon the payment of fees, if any, determined in accordance with paragraph (e) of this section.

(1) *Current index.* Included in the material available pursuant to 5 U.S.C. 552(a)(2) shall be an index of:

(i) All other material maintained on file pursuant to 5 U.S.C. 552(a)(2); and

(ii) All material published by the Commission in the **Federal Register** and currently in effect.

(2) *Deletion of identifying details.*

Wherever deletions from material maintained on file pursuant to 5 U.S.C. 552(a)(2) are required in order to prevent a clearly unwarranted invasion of privacy, justification for the deletions shall be placed as a preamble to documents from which such deletions are made.

(d) *Materials available pursuant to 5 U.S.C. 552(a)(3)—(1) Request procedures.*

(i) Each request for records pursuant to this section shall be in writing over the signature of the requester, addressed to the Office of the General Counsel, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425 and:

(A) Shall clearly and prominently be identified as a request for information under the Freedom of Information Act (if submitted by mail or otherwise submitted in an envelope or other cover, be clearly and prominently identified as such on the envelope or other cover—e.g., FOIA); and

(B) Shall contain a sufficiently specific description of the record requested with respect to names, dates, and subject matter to permit such record to be identified and located; and

(C) Shall contain a statement that whatever costs involved pursuant to paragraph (e) of this section will be paid, that such costs will be paid up to a specified amount, or that waiver or reduction of fees is requested pursuant to paragraph (e) of this section.

(ii) If the information submitted pursuant to paragraph (d)(1)(i)(B) of this section is insufficient to enable identification and location of the records, the General Counsel shall as soon as possible notify the requester in writing indicating the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought. Time requirements under the regulations in this part are tolled from the date notification under this section is sent to the requester until an answer in writing to such notification is received from requester.

(iii) A request for records that is not in writing or does not comply with paragraph (d)(1)(i) of this section is not a request under the Freedom of Information Act and the 10 day time limit for agency response under the Act will not be deemed applicable.

(iv) Except as otherwise provided in this section, the General Counsel shall immediately notify the requester of noncompliance with paragraphs (d)(1)(i)(C) and (e) of this section.

(2) *Agency determinations.* (i) Responses to all requests pursuant to 5 U.S.C. 552(a)(3) shall be made by the General Counsel in writing to the requester within 10 working days after receipt by the General Counsel of such request except as specifically exempted under paragraphs (d)(1) (ii), (iii) and (iv) of this section, and shall state:

(A) Whether and to what extent the Commission will comply with the request;

(B) The probable availability of the records or that the records may be furnished with deletions or that records will be denied as exempt pursuant to 5 U.S.C. 552(b)(1) through (9);

(C) The estimated costs, determined in accordance with paragraph (e) of this section, including waiver or reduction of fee as appropriate and any deposit or prepayment requirement; and

(D) When records are to be provided, the time and place at which records or copies will be available determined in accordance with the terms of the request and with paragraph (d)(3) of this section. Such response shall be termed a determination notice.

(ii) In the case of denial of requests in whole or part the determination notice shall state:

(A) Specifically what records are being denied;

(B) The reasons for such denials;

(C) The specific statutory exemption(s) upon which such denial is based;

(D) The names and titles or positions of every person responsible for the denial of such request; and

(E) The right of appeal to the Staff Director of the Commission and procedures for such appeal as provided under paragraph (g) of this section.

(iii) Each request received by the Office of the General Counsel for records pursuant to the regulations in this part shall be recorded immediately. The record of each request shall be kept current, stating the date and time the request is received, the name and address of the person making the request, any amendments to such request, the nature of the records requested, the action taken regarding the request, including waiver of fees, extensions of time pursuant to 5 U.S.C. 552(a)(6)(B), and appeals. The date and subject of any letters pursuant to paragraph (d)(1) of this section or agency determinations pursuant to paragraph (d)(2)(i) of this section, the date(s) any records are subsequently furnished, and the payment requested and received.

(3) *Time limitations.* (i) Time limitations for agency response to a request for records established by the

regulations in this part shall begin when the request is recorded pursuant to paragraph (d)(2)(iii) of this section. A written request pursuant to FOIA but sent to an office of the Commission other than the Office of the General Counsel shall be date stamped, initialed, and redirected immediately to the Office of the General Counsel. The required period for agency determination shall begin when it is received by the Office of the General Counsel in accordance with paragraph (d)(2)(iii) of this section.

(ii) In unusual circumstances, pursuant to 5 U.S.C. 552(a)(6)(B), the General Counsel may, in the case of initial determinations under the regulations in this part, extend the 10 working day time limit in which the agency is required to make its determination notification. Such extension shall be communicated in writing to the requesting party setting forth with particularity the reasons for such extension and the date on which a determination is expected to be transmitted. Such extensions may not exceed 10 working days for any request and may only be used to the extent necessary to properly process a particular request. Such extension is permissible only where there is a demonstrated need:

(A) To search for and collect the requested records from field facilities or other establishments that are separate from the Office of the General Counsel;

(B) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(C) For consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the same agency having substantial subject matter interest therein.

(e) *Fees—(1) Definitions.* The following definitions apply to the terms when used in this section:

(i) *Direct costs* means those expenditures that the Commission actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under paragraph (d) of this section. Direct costs include, for example, the salary of the employee(s) performing the work (the basic rate of pay for the employee(s) plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and

heating or lighting the facility in which the records are stored.

(ii) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. However, an entire document will be duplicated if this would prove to be a more efficient and less expensive method of complying with a request than a more detailed manner of searching. Search is distinguished from review of material in order to determine whether the material is exempt from disclosure.

(iii) *Duplication* means the process of making a copy of a document necessary to respond to a request for disclosure of records. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(iv) *Review* means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(v) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In deciding whether a requester properly belongs in this category, the General Counsel will determine the use to which a requester will put the documents requested. When the General Counsel has reasonable cause to doubt such intended use, or where such use is not clear from the request itself, the General Counsel will seek additional clarification before assigning the request to a specific category.

(vi) *Educational institution* means a school, an institution of higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(vii) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(viii) *Representative of the news media* means any person actively gathering news for an entity that is

organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. News media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(2) *Costs to be included in fees.* The direct costs included in fees will vary according to the following categories of requests:

(i) *Commercial use requests.* Fees will include the Commission's direct costs for searching for, reviewing, and duplicating the requested records.

(ii) *Educational and noncommercial scientific institution requests.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) *Requests from representatives of the news media.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (e)(1)(viii) of this section.

(iv) *All other requests.* The Commission will charge requesters who do not fit into any of the categories in paragraphs (e)(2)(i) through (iii) of this section fees that cover the direct costs of searching for and duplicating records that are responsive to the requests, except for the first two hours of search time and the first 100 pages duplicated. However, requests from persons for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 and § 705.10 of this chapter.

(3) *Fee calculation.* Fees will be calculated as follows:

(i) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search.

(ii) *Computer search.* At the actual direct cost of providing the search, including computer search time directly attributable to search for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) *Review* (commercial use requests only). At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee.

(iv) *Duplication.* At 20 cents per page for paper copy. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) *Additional services; certification.* Express mail and other additional services that may be arranged by the requester will be charged at actual cost. The fee for certification or authentication of copies shall be \$3.00 per document.

(vi) *Assessment of interest.* The Commission may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(vii) No fee shall be charged if the total billable cost calculated under paragraphs (e)(2) and (3) of this section is less than \$10.00.

(4) *Waiver or reduction of fees.* (i) Documents will be furnished without charge, or at a reduced charge, where disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) Whenever a waiver or reduction of fees is granted, only one copy of the record will be furnished.

(iii) The decision of the General Counsel on any fee waiver or reduction request shall be final and unappealable.

(5) *Payment procedures—(i) Fee payment.* Payment of fees shall be made by cash (if delivered in person), check, or money order payable to the United States Commission on Civil Rights.

(ii) *Notification of fees.* No work shall be done that will result in fees in excess of \$25.00 without written authorization from the requester. Where it is anticipated that fees will exceed \$25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester

will be notified of the amount of the projected fees. The notification shall offer the requester an opportunity to confer with the General Counsel in an attempt to reformulate the request so as to meet the requester's needs at a lower cost. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(6) *Advance payment of fees.* When fees are projected to exceed \$250.00, the requester may be required to make an advance payment of all or part of the fee before the request is processed. If a requester has previously failed to pay a fee in a timely fashion (*i.e.*, within 30 days of the billing date), the requester will be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before a new or pending request is processed from that requester. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester has complied with this provision.

(7) *Other provisions—(i) Charges for unsuccessful search.* Charges may be assessed for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(ii) *Aggregating requests to avoid fees.* Multiple requests shall be aggregated when the General Counsel reasonably determines that a requester or group of requesters is attempting to break down a request into a series of requests to evade fees.

(iii) *Debt Collection Improvement Act of 1996.* The Debt Collection Improvement Act of 1996 (Pub. L. 104-134), including disclosure to consumer reporting agencies and use of collection agencies, will be used to encourage payment where appropriate.

(f) *Exemptions* (5 U.S.C. 552(b))—(1) *General.* The Commission may exempt from disclosure matters that are:

(i)(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and

(B) Are in fact properly classified pursuant to such Executive Order.

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters that would not be

available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Could deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(E) Could disclose techniques and procedures for all enforcement investigations or prosecutions, or could disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual;

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2) Investigatory records or information. (5 U.S.C. 552(b)(7)).

(i) Among the documents exempt from disclosure pursuant to paragraph (f)(1)(vii) of this section shall be records or information reflecting investigations that either are conducted for the purpose of determining whether a violation(s) of legal right has taken place, or have disclosed that a violation(s) of legal right has taken place, but only to the extent that production of such records or information would fall within the classifications established in paragraphs (f)(1)(vii)(B) through (F) of this section.

(ii) Among the documents exempt from disclosure under paragraphs (f)(1)(vii)(D) and (f)(2)(i) of this section concerning confidential sources shall be documents that disclose the fact or the substance of a communication made to the Commission in confidence relating to an allegation or support of an allegation of wrongdoing by certain persons. It is

sufficient under this section to indicate the confidentiality of the source if the substance of the communication or the circumstances of the communication indicate that investigative effectiveness could reasonably be expected to be inhibited by disclosure.

(iii) Whenever a request is made that involves access to records described in paragraph (f)(1)(vii)(A) of this section and the investigation or proceeding involves a possible violation of criminal law and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this section.

(3) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions that are exempt under this section.

(g) *Administrative appeals.* (1) These procedures apply whenever a requester is denied records under paragraph (d)(2)(i) of this section.

(2) Parties may appeal decisions under paragraph (d)(2)(i) of this section within 90 days of the date of such decision by filing a written request for review addressed to the Staff Director, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, by certified mail, including a copy of the written denial, and may include a statement of the circumstances, reasons or arguments advanced in support of disclosure. Review will be made by the Staff Director on the basis of the written record.

(3) The decision on review of any appeal filed under this section shall be in writing over the signature of the Staff Director will be promptly communicated to the person requesting review and will constitute the final action of the Commission.

(4) Determinations of appeals filed under this section shall be made within 20 working days after the receipt of such appeal. If, on appeal, denial of records is in whole or part upheld, the Staff Director shall notify the persons making such request of the provisions for judicial review of that determination under 5 U.S.C. 552(a)(6).

(5) An extension of time may be granted under this section pursuant to criteria established in paragraph (d)(3)(ii) (A) through (C) of this section, except that such extension together with any extension, which may have been granted pursuant to paragraph (d)(3)(ii)

of this section, may not exceed a total of 10 working days.

§ 704.2 Complaints.

Any person may bring to the attention of the Commission a grievance that he or she believes falls within the jurisdiction of the Commission, as set forth in section 3 of the Act. This shall be done by submitting a complaint in writing to the Office of Civil Rights Evaluation, U.S. Commission on Civil Rights, 9th Street, NW., Washington, DC 20425. Allegations falling under section 3(a)(1) of the Act must be under oath or affirmation. All complaints should set forth the pertinent facts upon which the complaint is based, including but not limited to specification of:

(a) Names and titles of officials or other persons involved in acts forming the basis for the complaint;

(b) Accurate designations of place locations involved;

(c) Dates of events described in the complaint.

§ 704.3 Other requests and communications.

Requests for information should be addressed to the Public Affairs Unit and requests for Commission literature should be directed to National Clearinghouse Library, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington DC 20425. Communications with respect to Commission proceedings should be made pursuant to § 702.17 of this chapter. All other communications should be directed to Office of Staff Director, U.S. Commission on Civil Rights, 624 9th Street, Washington, DC 20425.

§ 704.4 Restrictions on disclosure of information.

(a) By the provisions of the Act, no evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission, and any person who releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than \$1,000 or imprisoned for not more than 1 year.

(b) Unless a matter of public record, all information or documents obtained or prepared by any Commissioner, officer, or employee of the Commission, including members of Advisory Committees, in the course of his or official duties, or by virtue of his or her official status, shall not be disclosed or used by such person for any purpose except in the performance of his or her official duties.

(c) Any Commissioner, officer, or employee of the Commission, including members of Advisory Committees, who is served with a subpoena, order, or other demand requiring the disclosure of such information or the production of such documents shall appear in response to such subpoena, order, or other demand and, unless otherwise directed by the Commission, shall respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this section. Any such person who is served with such a subpoena, order, or other demand shall promptly advise the Commission of the service of such subpoena, order, or other demand, the nature of the information or documents sought, and any circumstances that may bear upon the desirability of making available such information or documents.

PART 705—MATERIALS AVAILABLE PURSUANT TO 5 U.S.C. 552a

- Sec.
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Authority: 5 U.S.C. 552a.

§ 705.1 Purpose and scope.

(a) The purpose of this part is to set forth rules to inform the public regarding information maintained by the United States Commission on Civil Rights about identifiable individuals and to inform those individuals how they may gain access to and correct or amend information about themselves.

(b) The rules in this part carry out the requirements of the Privacy Act of 1974 (Public Law 93-579) and in particular 5 U.S.C. 552a as added by that Act.

(c) The rules in this part apply only to records disclosed or requested under

the Privacy Act of 1974, and not to requests for information made pursuant to the Freedom of Information Act, 5 U.S.C. 552.

§ 705.2 Definitions.

For the purpose of this part:

- (a) *Commission* and *agency* mean the U.S. Commission on Civil Rights;
- (b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;
- (c) *Maintain* includes maintain, collect, use, or disseminate;
- (d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(e) *System record* means a group of any records under the control of the Commission from which information may be retrieved by the name of the individual or by some identifying particular assigned to that individual;

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided in 13 U.S.C. 8;

(g) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected;

(h) *Confidential source* means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence; and

(i) *Act* means the Privacy Act of 1974, Public Law 93-579.

§ 705.3 Procedures for requests pertaining to individual records in a system of records.

(a) An individual seeking notification of whether a system of records contains a record pertaining to him or her or an individual seeking access to information or records pertaining to him or her, that are available under the Privacy Act of 1974, shall present his or her request in person or in writing to the General Counsel of the Commission.

(b) In addition to meeting the requirements set forth in § 705.4(c) or (d), any person who requests

information under the regulations in this part shall provide a reasonably specific description of the information sought so that it may be located without undue search or inquiry. If possible, that description should include the nature of the records sought, the approximate dates covered by the record, and, if known by the requester, the system in which the record is thought to be included. Requested information that is not identified by a reasonably specific description is not an identifiable record, and the request for that information cannot be treated as a formal request.

(c) If the description is insufficient, the agency will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought.

§ 705.4 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) The General Counsel is the designated Privacy Act Officer for the Commission.

(b) An individual making a request to the General Counsel in person may do so at the Commission's headquarters office, 624 9th Street, N.W., Washington, D.C. 20425, on any business day during business hours. Persons may also appear for purposes of identification only, at any of the regional offices of the Commission on any business day during business hours. Regional offices are located as follows:

Region I: Eastern Regional Office, Washington, DC

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Region II: Southern Regional Office, Atlanta, Georgia

Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee.

Region III: Midwestern Regional Office, Chicago, Illinois

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region IV: Central Regional Office, Kansas City, Kansas

Alabama, Arkansas, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, and Oklahoma.

Region V: Rocky Mountain Regional Office, Denver, Colorado

Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming.

Region VI: Western Regional Office, Los Angeles, California

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas, and Washington.

(c) An individual seeking access to records in person may establish his or her identity by the presentation of one document bearing a photograph (such as a driver's license, passport, or identification card or badge) or by the presentation of two items of identification that do not bear a photograph, but do bear both a name and address (such as a credit card). When identification is made without photographic identification, the Commission will request a signature comparison to the signature appearing on the items offered for identification, whenever possible and practical.

(d) An individual seeking access to records by mail shall establish his or her identity by a signature, address, date of birth, and one other identification, such as a copy of a driver's license, passport, identification card or badge, credit card, or other document. The words *Privacy Act Request* should be placed in capital letters on the face of the envelope in order to facilitate requests by mail.

(e) An individual seeking access in person or by mail who cannot provide the required documentation of identification may provide a notarized statement, swearing or affirming to his or her identity and to the fact that he or she understands that there are criminal penalties for the making of false statements.

(f) The parent or guardian of a minor or a person judicially determined to be incompetent, in addition to establishing the identity of the minor or incompetent person he or she represents as required by paragraphs (a) through (c) of this section, shall establish his or her own parentage or guardianship by furnishing a copy of a birth certificate showing parentage or court order establishing guardianship.

(g) An individual seeking to review information about himself or herself may be accompanied by another person of his or her own choosing. In all such cases, the individual seeking access shall be required to furnish a written statement authorizing the discussion of his or her record in the presence of the accompanying person.

§ 705.5 Disclosure of requested information to individuals.

The General Counsel, or one or more assistants designated by him or her, upon receiving a request for notification of the existence of a record or for access to a record shall:

- (a) Determine whether such record exists;
- (b) Determine whether access is available under the Privacy Act;
- (c) Notify the requesting person of those determinations within 10 (ten)

working days (excluding Saturdays, Sundays, and legal public holidays); and

(d) Provide access to information pertaining to that person that has been determined to be available.

§ 705.6 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished to him or her under this part may request the agency to correct or amend all or part of that record.

(b) Each individual requesting a correction or amendment shall send the request to the General Counsel.

(c) Each request for a correction or amendment of a record shall contain the following information:

- (1) The name of the individual requesting the correction or amendment.
- (2) The name of the system of records in which the record sought to be amended is maintained.
- (3) The location of the record system from which the record was obtained.
- (4) A copy of the record sought to be amended or a description of that record.
- (5) A statement of the material in the record that should be corrected or amended.
- (6) A statement of the specific wording of the correction or amendment sought.
- (7) A statement of the basis for the requested correction or amendment, including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§ 705.7 Agency review of request for correction or amendment of the record.

Within ten (10) working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of the request for the correction or amendment of a record, the General Counsel shall acknowledge receipt of the request and inform the individual that his or her request has been received and inform the individual whether further information is required before the correction or amendment can be considered. Further, the General Counsel shall promptly and, under normal circumstances, not later than thirty (30) working days after receipt of the request, make the requested correction or amendment or notify the individual of his or her refusal to do so, including in the notification the reasons for the refusal and the procedures established by the Commission by which the individual may initiate a review of that refusal. In the event of correction or amendment, an individual shall be provided with one copy of each record or portion thereof corrected or

amended pursuant to his or her request without charge as evidence of the correction or amendment. The Commission shall also provide to all prior recipients of such a record, the corrected or amended information to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

§ 705.8 Appeal of an initial adverse agency determination.

(a) Any individual whose request for access or for a correction or amendment that has been denied, in whole or in part, by the General Counsel may appeal that decision to the Staff Director of the Commission, 624 9th Street, NW., Washington, DC 20425, or to a designee of the Staff Director.

(b) The appeal shall be in writing and shall:

- (1) Name the individual making the appeal;
- (2) Identify the record sought to be amended or corrected;
- (3) Name the record system in which that record is contained;
- (4) Contain a short statement describing the amendment or correction sought; and
- (5) State the name of the person who initially denied the correction or amendment.

(c) Not later than thirty (30) working days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the agency received the appeal, the Staff Director shall complete his or her review of the appeal and make a final decision thereon, unless, for good cause shown, the Staff Director extends the appeal period beyond the initial thirty (30) day appeal period. In the event of such an extension, the Staff Director shall promptly notify the individual making the appeal that the period for a final decision has been extended.

(d) After review of an appeal request, the Staff Director will send a written notice to the requester containing the following information:

- (1) The decision; and if the denial is upheld, the reasons for the decision;
- (2) The right of the requester to institute a civil action in a Federal District Court for judicial review of the decision if the appeal is denied; and
- (3) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's decision denying the request. The Commission shall make this statement available to any person to whom the record is later disclosed together with a brief statement, if the Commission considers it appropriate, of

the agency's reasons for denying the requested correction or amendment. These statements shall also be provided to all prior recipients of the record to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

§ 705.9 Disclosure of records to a person other than the individual to whom the record pertains.

(a) Any individual who desires to have his or her record disclosed to or mailed to a third person may authorize that person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized. The agent shall also submit proof of his or her own identity as provided in § 705.4.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court to be incompetent, due to physical or mental incapacity, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship by birth certificate, copy of a court order or similar documents, and proof of the individual's identity as provided in § 705.4.

(c) An individual to whom a record is to be disclosed, in person, pursuant to this part may have a person of his or her own choosing accompany the individual when the record is disclosed.

§ 705.10 Fees.

If an individual requests copies of his or her records the charge shall be three (3) cents per page; however, the Commission shall not charge for copies furnished to an individual as a necessary part of the process of disclosing the record to an individual. Fees may be waived or reduced in accordance with § 704.1(e) of this chapter because of indigency, where the cost is nominal, when it is in the public interest not to charge, or when waiver would not constitute an unreasonable expense to the Commission.

§ 705.11 Penalties.

Any person who makes a false statement in connection with any request for a record, or in any request for an amendment to a record under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 705.12 Special procedures: Information furnished by other agencies.

When records or information sought from the Commission include information furnished by other Federal agencies, the General Counsel shall

consult with the appropriate agency prior to making a decision to disclose or to refuse to disclose the record, but the decision whether or not to disclose the record shall be made by the General Counsel.

§ 705.13 Exemptions.

(a) Under the provision of 5 U.S.C. 552a(k), it has been determined by the agency that the following exemptions are necessary and proper and may be asserted by the agency:

(1) *Exemption (k)(2) of the Act.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act: Provided, however, That if any individual is denied any right, privilege, or benefit that he or she would otherwise be eligible for, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to [the effective date of this section], under an implied promise that the identity of the source would be held in confidence.

(2) *Exemption (k)(4) of the Act.* Statistical personnel records that are used only to generate aggregate data or for other evaluative or analytical purposes and that are not used to make decisions on the rights, benefits, or entitlements of individuals.

(3) *Exemption (k)(5) of the Act.* Investigatory material maintained solely for the purposes of determining an individual's qualifications, eligibility, or suitability for employment in the Federal civilian service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) *Exemption (k)(6) of the Act.* Testing or examination material used solely to determine individual qualifications for promotion or appointment in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(b) Following are Commission systems of records that are partially exempt under 5 U.S.C. 552a(k)(2), (4),

(5), and (6) and the reasons for such exemptions:

(1) Appeals, Grievances, and Complaints (staff)—Commission Project, CRC-001. Exempt partially under 5 U.S.C. 552a(k)(2). The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(2) Complaints, CRC-003—Exempt partially under 5 U.S.C. 552a(k)(2). The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(3) Commission projects, CRC-004—Partially exempt under 5 U.S.C. 552a(k)(2). The reasons for asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(4) Other Employee Programs: EEO, Troubled Employee, and Upward Mobility, CRC-006—Partially exempt under 5 U.S.C. 552a(k)(4), (5), and (6). The reasons for asserting the exemptions are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, primarily, to facilitate proper selection or continuance of the best applicants or persons for a given position.

(5) State Advisory Committees Projects, CRC-009—Partially exempt under 5 U.S.C. 552a(k)(2). The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

§ 705.95 Accounting of the disclosures of records.

(a) All disclosures of records covered by this part, except for the exemptions listed in paragraph (b) of this section, shall be accounted for by keeping a written record of the particular record disclosed, the name and address of the person or agency to whom or to which disclosed, and the date, nature, and purpose of the disclosure.

(b) No accounting is required for disclosures of records to those officials and employees of the Commission who have a need for the record in the performance of their duties or if disclosure would be required under the Freedom of Information Act, 5 U.S.C. 552.

(c) The accounting shall be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Records Administrator for storage, in which event, the accounting pertaining to those records, unless maintained separately, shall be transferred with the records themselves.

(d) The accounting of disclosures may be recorded in any system the Commission determines is sufficient for this purpose, however, the Commission must be able to construct from its system a listing of all disclosures. The system of accounting of disclosures is not a system of records under the definition in § 705.2(e) and no accounting need be maintained for disclosure of the accounting of disclosures.

(e) Upon request of an individual to whom a record pertains, the accounting of the disclosures of that record shall be made available to the requester, provided that he or she has complied with § 705.3(a) and with § 705.4(c) or (d).

PART 706—EMPLOYEE RESPONSIBILITIES AND CONDUCT**Subpart A—General Provisions**

Sec.

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Authority: Part III of 5 U.S.C.

Subpart A—General Provisions**§ 706.1 Implementation of regulations.**

The U.S. Commission on Civil Rights (hereinafter referred to as the Commission) through the regulations in this part, implements, with appropriate modifications, relevant sections of Part III of Title 5 of the United States Code.

§ 706.2 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government's business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Commission's regulations covering the agency's employees and special Government employees, prescribing standards of conduct and responsibilities and governing statements reporting employment and financial interests.

§ 706.3 Definitions.

In this part:

Commission means the United States Commission on Civil Rights, an Executive agency as defined by 5 U.S.C. 105.

Employee means an officer or employee of the Commission including a special Government employee, as defined in 18 U.S.C. 202.

Executive order means Executive Order 11222 of May 8, 1965, (3 CFR, 1964–1965 Comp., p. 306), prescribing standards of ethical conduct for Government officers and employees.

Person means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 706.4 Distribution.

(a) Within 90 days after August 30, 2002, the Commission shall furnish each employee with a copy of the regulations in this part.

(b) The Commission shall furnish all new employees with a copy of the regulations at the time of their entrance on duty.

(c) The Commission shall bring the regulations to the attention of each employee annually and at such other times as circumstances warrant.

(d) The Commission shall have available for review by employees copies of relevant laws, the Executive order, and pertinent Commission instructions relating to ethical and other standards of conduct.

§ 706.5 Counseling.

The General Counsel of the Commission shall serve as the agency's ethical conduct counselor and is the designated agency official for the purposes of the Ethics in Government Act. The General Counsel shall respond to requests by employees and special Government employees for advice and guidance respecting questions of ethical conduct, conflicts of interest, reporting of financial interests and other matters of law covered by the regulations in this part.

§ 706.6 Disciplinary and other remedial action.

An employee of the Commission who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interests may include but is not limited to:

- (a) Changes in assigned duties;
- (b) Divestment by an employee of any conflicting interest; or
- (c) Disqualification for a particular assignment.

§ 706.7 Outside employment and other activity.

Employees of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of their Government employment. Employees who wish to engage in outside employment shall first obtain the approval, in writing, of their supervisor.

§ 706.8 Prohibition against disclosure of evidence.

All employees of the Commission are subject to the prohibition on disclosure of evidence taken in executive session contained in § 702.6 of this chapter.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees**§ 706.9 Proscribed actions.**

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding Commission efficiency or economy;
- (d) Making a Commission decision outside official channels;
- (e) Losing complete independence or impartiality; or
- (f) Affecting adversely the confidence of the public in the integrity of the Commission.

§ 706.10 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

- (1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
- (2) Conducts operations or activities that are regulated by the Commission; or
- (3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Exceptions from the prohibitions contained in paragraph (a) of this section are as follows:

- (1) Gifts, entertainment, and favors that derive from family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned that are the motivating factors;
- (2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;
- (3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) Employees shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than themselves. This paragraph, however, does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and 5 U.S.C. 7342.

(e) Neither this section nor § 706.11 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part, for which no Government payment or reimbursement is made. This paragraph, however, does not allow employees to be reimbursed, or payment to be made on their behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits.

§ 706.11 Proscribed outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are not limited to:

- (1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of conflict(s) of interest; or
- (2) Outside employment that tends to impair mental or physical capacity to perform Governmental duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for service to the Government as prohibited by 18 U.S.C. 209.

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or Commission regulations. An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special

preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, which depends on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission or which draws substantially on official data or ideas that have not become part of the body of public information.

(d) This section does not preclude an employee from:

- (1) Participation in the activities of national or State political parties not proscribed by law;
- (2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational public service, or civic organization; or
- (3) Outside employment permitted under the regulations in this part.

§ 706.12 Financial interests.

(a) Employees shall not:

- (1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with their Government duties and responsibilities; or
- (2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through their Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by law, the Executive order, or Commission regulations.

(c) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by law, the Executive order, or Commission regulations.

§ 706.13 Use of Government property.

Employees shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. Employees have a

positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued them.

§ 706.14 Misuse of information.

For the purpose of furthering a private interest, employees shall not directly or indirectly use, or allow the use of, official information obtained through or in connection with their Government employment that has not been made available to the general public.

§ 706.15 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a just financial obligation means one acknowledged by the employee or reduced to judgment by a court, and in a proper and timely manner means in a manner that the agency determines does not, under the circumstances, reflect adversely on the Government as the employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the disputed debt.

§ 706.16 Gambling, betting, and lotteries.

Employees shall not participate while on Government-owned or leased property or while on duty for the Government in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 706.17 General conduct prejudicial to the Government.

Employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government.

§ 706.18 Miscellaneous statutory provisions.

Employees shall acquaint themselves with each statute that relates to their ethical and other conduct as an employee of the Commission and of the Government. The attention of Commission employees is directed to the following statutory provisions:

(a) House Document 103, 86th Congress, 1st Session, the "Code of Ethics for Government Service";

(b) The provisions relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned (18 U.S.C. 201–225);

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913);

(d) The prohibitions against disloyalty and striking (5 U.S.C. 73811; 18 U.S.C. 1918);

(e) The prohibitions against the disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 1905);

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 1349(b));

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719);

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917);

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001);

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508);

(m) The prohibitions against:

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of the employee by reason of his or her employment (18 U.S.C. 654);

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285);

(o) The prohibitions against political activities (5 U.S.C. 7323 and 18 U.S.C. 602, 603, and 607); and

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agent Registration Act (18 U.S.C. 219).

Subpart C—Financial Reporting Requirements

§ 706.19 Statements of financial and property interests and outside employment.

Pursuant to the Ethics in Government Act of 1978 (Public Law 95–521, as amended by Public Law 101–194, 101–280, 102–90, 102–378, and 104–65, referred to hereinafter in this subpart as "the Act"), the following officers and employees of the Commission are required to file annual reports of financial and property interests and outside employment if they have served 61 days or more in their positions during the preceding calendar year:

(a) Officers or employees, including a special Government employee as defined in 18 U.S.C. 202, who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(b) Employees in the excepted service in positions that are of a confidential or policy-making character, unless their positions have been excluded by the Director of the Office of Government Ethics; and

(c) Each designated agency ethics official.

§ 706.20 Time and place for filing of reports.

(a) Annual reports are to be filed no later than May 15 of each calendar year, except that persons assuming a position for which reports are required who have not immediately prior to this assumption occupied a covered position in another agency, must file a report within 30 days after assuming the position at the Commission. In the event an individual terminates employment with the Commission and does not accept another position for which reporting is required, the report must be filed no later than the 30th day after termination, covering:

(1) The preceding calendar year if the annual May 15 report has not been filed; and

(2) The portion of the present calendar year up to the date of termination.

(b) Reports shall be filed with the designated ethics officer (General Counsel) of the Commission. The reports of the designated ethics officer and nominees to and holders of positions that require confirmation by the Senate shall be transmitted by the General Counsel to the Office of Government Ethics of the Office of Personnel Management.

§ 706.21 Exclusion of certain positions from reporting requirements.

(a) Under section 101 of the Act, a report is required of any person in the executive branch in a position excepted from the competitive service by reason of being of a confidential or policymaker character. The exclusion of any position will be effective as of the time the Commission files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of its current occupant. Such a list must be filed with the Office of Government

Ethics on or before the date on which such reports are due under the Act.

(b) In the event that the Office of Government Ethics finds that one or more positions have been improperly excluded, it will so advise the Commission and set a date for the filing of the report.

§ 706.22 Information required to be reported—reporting forms.

Information required to be reported by the Act shall be set forth in the manner specified in, and in accordance with the instructions contained in, Standard Forms issued by the Office of Personnel Management, to be used as follows:

(a) Standard Form 278—for use by an officer or employee filing:

(1) An annual report pursuant to section 101 of the Act, or

(2) A departure report upon termination of employment, pursuant to section 101 of the Act;

(b) Standard Form 278A—for use by:

(1) An individual assuming a position for which reporting is required pursuant to section 201(a) of the Act; or

(2) An individual whose nomination has been transmitted by the President to the Senate, pursuant to section 201(b) of the Act.

§ 706.23 Review of reports.

(a) Financial reports are reviewed by the Commission's designated Ethics official or the Director of the Office of Government Ethics, as appropriate. Reports are to be reviewed within 60 days after the date of their filing or transmittal to the Office of Government Ethics.

(b) After reviewing a report, the reviewing official is required to:

(1) State upon the report that the reporting individual is in compliance with applicable laws and regulations and to sign the report;

(2) Notify the reporting individual that additional information is required to be submitted and the time by which it must be submitted; or

(3) Notify the reporting individual that the report indicates noncompliance and afford the individual a reasonable opportunity for a written or oral response after which the reviewing official reaches an opinion whether the individual is in compliance.

(c) If the reviewing official determines that the reporting individual is not in compliance with applicable laws and regulations, the reviewing official will notify the individual of that opinion and after an opportunity for personal consultation notify the individual of the steps that should be taken to assure compliance and the date by which such steps should be taken.

(d) The use of any steps to bring the individual in compliance are to be in accordance with regulations issued by the Director of the Office of Government Ethics.

(e) To assist employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, the designated Commission ethics official is to maintain a list of those circumstances or situations that have resulted or may result in noncompliance and the lists are to be periodically published and furnished to individuals required to file reports under this Act.

§ 706.24 Public access to financial disclosure reports.

(a) Pursuant to section 105(b) of the Act, each report will be made available for public inspection within 15 days after the report is received by the agency, whether or not the review of the report prescribed by section 106 of the Act has been completed.

(b) Pursuant to section 105(b) of the Act, the following rules are applicable to public access to financial reports:

(1) A financial disclosure report may not be made available to any person nor may a copy thereof be provided to any person except upon written application by such person stating:

(i) That person's name, occupation, and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(iii) That such person is aware that it is unlawful to obtain or use a report:

(A) For any unlawful purpose;

(B) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) For determining or establishing the credit rating of any individual; or

(D) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Any application for a report shall be available to the public during the period in which the requested report is available to the public.

(2) [Reserved]

(c) Requests for copies of financial disclosure reports of officers appointed by the President by and with the advice and consent of the Senate, as well as nominees to such offices and designated Commission ethics officials, may be directed to the Director of the Office of Government Ethics.

(d) To gain access to or to obtain a copy of a report filed with the Commission, an individual should appear in person at the office of the

General Counsel of the Commission, 624 9th Street, NW., Washington, DC 20425, during the hours 8:30 a.m. to 4:30 p.m. and complete an application form. Requests by mail should contain the information described in paragraph (b) of this section, together with the signature of the requester. Requests that do not contain the required information will be returned. Notice of the statutory prohibitions on use will be attached to copies of reports provided in response to a request otherwise properly filled out.

PART 707—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY U.S. COMMISSION ON CIVIL RIGHTS

Sec.

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Authority: 29 U.S.C. 791 *et seq.*

§ 707.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973, to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 707.2 Application.

This part applies to all programs and activities, including employment, conducted by the Agency.

§ 707.3 Definitions.

For the purposes of this part, the term—

(a) *Agency* means the U.S. Commission on Civil Rights and its State Advisory Committees.

(b) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision

include readers, Braille materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

(c) *Complete complaint* means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(d) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, vehicles, or other real or personal property.

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

(1) Physical or mental impairment includes—

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

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

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

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a

mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

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

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

(iii) Has none of the impairments defined in paragraph (e)(1) of this definition but is treated by the Agency as having such an impairment.

(f) *Qualified individual with disabilities* means—

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

(2) With respect to employment, an individual with disabilities who meets the definition set forth in 29 CFR 1614.203, which is made applicable to this part by § 707.7.

(3) With respect to any other Agency program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(g) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Public Law 93-112, 87 Stat. 394 (29 U.S.C. 794), as amended through 1998. As used in this part, section 504 applies only to programs or activities conducted by the Agency. The Agency does not operate any programs of Federal financial assistance to other entities.

§ 707.4 Self-evaluation and remedial measures.

(a) The Agency shall, before February 16, 1991 evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with disabilities and organizations representing

individuals with disabilities, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 707.5 Notice.

(a) The Agency shall make available to all employees, applicants, and other interested persons, as appropriate, information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and such information shall be made available to the extent the Staff Director finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

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

(c) The Agency shall take appropriate steps to provide individuals with disabilities with information regarding their section 504 rights under the Agency's programs or activities.

§ 707.6 General prohibitions against discrimination.

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

(b)(1) The Agency, in providing any aid, benefit, or service, shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit(s), or service(s);

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

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

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

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

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

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

(3) The Agency shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

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

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

(4) The Agency shall not in determining the site or location of a facility or activity make selections the purpose or effect of which would—

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

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

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

(c) The exclusion of non-disabled persons from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

(d) The Agency shall administer programs and activities in the most integrated setting appropriate to the

needs of qualified individuals with disabilities.

§ 707.7 Employment.

No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR 1614.101 through 1614.110, shall apply to employment in programs or activities conducted by the Agency.

§ 707.8 Physical access.

(a) *Discrimination prohibited.* Except as otherwise provided in this section, no qualified individual with disabilities shall, because the Agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b) *Existing facilities-program access—(1) Existing facilities defined.* For the purpose of this section, existing facilities means those facilities owned, leased or used through some other arrangement by the Agency on March 28, 1990.

(2) *General.* The Agency shall operate each program or activity conducted in an existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(i) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with disabilities

(ii) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this paragraph would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a

written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(3) *Methods.* (i) The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with disabilities, delivery of services at alternative accessible sites, alteration of existing facilities and construction of new facilities, use of accessible vehicles, or any other methods that result in making its program or activities readily accessible to and usable by individuals with disabilities.

(ii) The Agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (b)(2) of this section. The Agency, in making alterations to existing buildings to achieve program accessibility, shall meet accessibility requirements imposed by the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157,

(iii) In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(4) *Time period for compliance.* The Agency shall comply with the obligations established under this section before April 17, 1990, except that where structural changes in facilities are undertaken, such changes shall be made before February 16, 1993, but in any event as expeditiously as possible.

(5) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, before August 16, 1990, a transition plan setting forth the steps necessary to complete such changes. The Agency shall provide an opportunity to interested persons, including individuals with disabilities and organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public

inspection. The plan shall, at a minimum—

(i) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this paragraph and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official response for implementation of the plan.

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

(c) *New purchases, leases, or other arrangements.* (1) Any building or facility acquired after March 28, 1990, whether by purchase, lease (other than lease renewal), or any other arrangement, shall be readily accessible to and usable by individuals with disabilities.

(2) Nothing in this paragraph requires the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this paragraph would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(d) *New construction and alterations.* Each building or part of a building that

is constructed or altered by, on behalf of, or for the use of the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities in accordance with the requirements imposed by the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157.

§ 707.9 Access to communications.

(a) *Discrimination prohibited.* Except as otherwise provided in this section, no qualified individual with disabilities shall, because the Agency's communications are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

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

(c) *Specific requirements regarding oral communications—*(1)

Telecommunications devices for deaf persons. (i) The Agency headquarters and each regional office shall maintain and reliably answer at least one telecommunications device for deaf persons (TDD) or equally effective telecommunications device.

(ii) The Agency shall ensure that all Agency letterhead, forms, and other documents listing any Agency telephone number list the appropriate TDD numbers.

(2) *Interpreter service.* (i) The Agency shall establish a reliable system for the provision of qualified interpreters to individuals with disabilities for Agency programs or activities. This provision does not require the Agency to have an interpreter on staff, but does require the Agency to be able to provide a qualified interpreter on reasonable notice.

(ii) *Notice of the availability of interpreter service* shall be included in all announcements notifying the public of Agency activities to which the public is invited or which it is permitted to attend, including but not limited to the Commission's meetings, consultations, hearings, press conferences, and State Advisory Committee conferences and meetings. This notice shall designate the Agency official(s) and the address, telephone and TDD number to call to request interpreter services.

(d) *Specific requirements for printed communications.* (1) The Agency shall establish a system to provide to individuals with disabilities appropriate reader or taping service for all Agency publications that are available to the

public. This provision does not require the Agency to have a reader or taper on staff, but does require the Agency to be able to provide appropriate reader or taping service within a reasonable time and on reasonable notice. The Agency shall effectively notify qualified individuals with disabilities of the availability of reader or taping services.

(2) *Notice of the availability of reader or taping service* shall be included in all publications that are available to the public. This notice shall designate the Agency official(s) and the address, telephone, and TDD number to call to request interpreter services.

(e) *Nothing in this section or § 707.10 requires the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.* In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this section or § 707.10 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this paragraph would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§ 707.10 Auxiliary aids.

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

(b) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with disabilities.

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

§ 707.11 Eliminating discriminatory qualifications and selection criteria.

The Agency shall not make use of any qualification standard, eligibility requirement, or selection criterion that excludes particular classes of individuals with disabilities from an Agency program or activity merely because the persons are disabled, without regard to an individual's actual ability to participate. An irrebuttable presumption of inability to participate based upon a disability shall be permissible only if the condition would, in all instances, prevent an individual from meeting the essential eligibility requirements for participating in, or receiving the benefits of, the particular program or activity.

§ 707.12 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 U.S.C. 791 by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Office of General Counsel.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157, is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Agency shall notify the complainant of the results of the investigation in a letter containing—

- (1) Findings of fact and conclusions of law;
- (2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by paragraph (g) of this section. The Staff Director may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Staff Director or the Staff Director's designee.

(j) The Agency shall notify the complainant in writing of the results of the appeal within 60 days of the receipt of the request. If the head of the Agency determines that additional information is needed from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (d), (g), (h), and (j) of this section may be extended for an individual case when the Staff Director determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The Agency may delegate its authority for conducting complaint investigations to other Federal agencies; however, the authority for making the final determination may not be delegated to another Agency.

PART 708—COLLECTION BY SALARY OFFSET FROM INDEBTED CURRENT AND FORMER EMPLOYEES

Sec.

- 708.1 Purpose and scope.
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- 708.13 Non-waiver of rights by payments.
- 708.14 Interest, penalties, and administrative costs.

Authority: 5 U.S.C. 5514.

§ 708.1 Purpose and scope.

(a) The regulations in this part provide the procedure pursuant to 5 U.S.C. 5514 and 5 CFR 550.1101 through 550.1110 for the collection by administrative offset of a Federal employee's salary without his or her consent to satisfy certain debts owed to the Federal government. This procedure applies to all Federal employees who owe debts to the U.S. Commission on Civil Rights (Commission). This provision does not apply when the

employee consents to recovery from his or her current pay account.

(b) This procedure does not apply to debts or claims arising under:

- (1) The Internal Revenue Code (26 U.S.C. 1 *et seq.*);
- (2) The Social Security Act (42 U.S.C. 301 *et seq.*);
- (3) The tariff laws of the United States; or

(4) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) The Commission shall except from salary offset provisions any adjustments to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits programs requiring periodic payroll deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude an employee or former employee from requesting a waiver of a salary overpayment under 5 U.S.C. 5584 or 10 U.S.C. 2774 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office (GAO) in accordance with procedures prescribed by the GAO. In addition, this procedure does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 708.2 Policy.

It is the policy of the Commission to apply the procedures in the regulations in this part uniformly and consistently in the collection of internal debts from its current and former employees.

§ 708.3 Definitions.

For the purposes of the regulations in this part the following definitions apply:

- (a) *Agency* means:
 - (1) An Executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission;
 - (2) A military department as defined in 5 U.S.C. 102;
 - (3) An agency or court in the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial panel on Multidistrict Litigation;
 - (4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and
 - (5) Other independent establishments that are entities of the Federal Government.

(b) *Creditor agency* means the agency to which the debt is owed.

(c) *Debt* means an amount owed to the United States from sources, which include loans insured or guaranteed by the United States and amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Deputy Staff Director* means the Deputy Staff Director of the Commission or in his or her absence, or in the event of a vacancy in the position or its elimination, the Director of Human Resources.

(e) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(g) *Former employee* means an employee who is no longer employed with the Commission but is currently employed with another Federal agency.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR chapter I.

(i) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Deputy Staff Director of the Commission.

(j) *Paying agency* means the agency employing the individual who owes the debt and is responsible for authorizing the payment of his or her current pay.

(k) *Pay interval* will normally be the biweekly pay period but may be some regularly recurring period of time in which pay is received.

(l) *Retainer pay* means the pay above the maximum rate of an employee's grade that he or she is allowed to keep in special situations rather than having the employee's rate of basic pay reduced.

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

(n) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 5 U.S.C. 8346(b), or any other law.

§ 708.4 Applicability.

The regulations in this part are to be followed when:

(a) The Commission is owed a debt by an individual who is a current employee of the Commission; or

(b) The Commission is owed a debt by an individual currently employed by another Federal agency; or

(c) The Commission employs an individual who owes a debt to another Federal agency.

§ 708.5 Notice.

(a) Deductions shall not be made unless the employee who owes the debt has been provided with written notice signed by the Deputy Staff Director or in his or her absence, or in the event of a vacancy in that position or its elimination, the Director of Human Resources (or the U.S. Department of Agriculture, National Finance Center acting on behalf of the Commission) of the debt at least 30 days before salary offset commences.

(b) The written notice from the Deputy Staff Director, acting on behalf of the Commission, as the creditor agency, shall contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the requirements concerning the current interest rate, penalties, and administrative costs, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards (4 CFR chapter I);

(5) The employee's right to inspect, request, or receive a copy of the government records relating to the debt;

(6) The employee's right to enter into a written repayment schedule for the voluntary repayment of the debt in lieu of offset;

(7) The right to a hearing conducted by an impartial hearing official (either an administrative law judge or an official who is not under the control of the Commission);

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing (*i.e.*, within 15 calendar days) of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if one is requested) will be issued at the earliest practical date but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(11) A statement that an employee knowingly submitting false or frivolous statements (5 CFR 550.1101), representations, or evidence may subject the employee to disciplinary procedures under 5 U.S.C. 7501 *et seq.* and 5 CFR part 752; penalties under the False Claims Act, 31 U.S.C. 3729–3731; or criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(13) A statement that an employee will be promptly refunded any amount paid or deducted for a debt that is later waived or found not valid unless there are applicable contractual or statutory provisions to the contrary; and

(14) The name, address, and phone number of an official who can be contacted concerning the indebtedness.

§ 708.6 Petitions for hearing.

(a) Except as provided in paragraph (d) of this section, an employee who wants a hearing must file a written petition for a hearing to be received by the Deputy Staff Director not later than 15 calendar days from the date of receipt of the Notice of Offset. The petition must state why the employee believes the determination of the Commission concerning the existence or amount of the debt is in error.

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses that the employee believes support his or her position.

(c) If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(d) If the employee files a petition for a hearing later than the 15 calendar days from the date of receipt of the Notice of Offset, as described in paragraph (a) of this section, the hearing official may accept the request if the employee can show that there was good cause (such as due to circumstances beyond his or her control or because he or she was not informed or aware of the time limit) for failing to meet the deadline date.

(e) An employee will not be granted a hearing and will have his or her disposable pay offset in accordance with the Deputy Staff Director's offset schedule if he or she fails to show good cause why he or she failed to file the petition for a hearing within the stated time limits.

§ 708.7 Hearing procedures.

(a) If an employee timely files a petition for a hearing under § 708.6, the Deputy Staff Director shall select the time, date, and location for the hearing.

(b) The hearing shall be conducted by an impartial hearing official.

(c) The Commission, as the creditor agency, will have the burden of proving the existence of the debt.

(d) The employee requesting the hearing shall have the burden of proof to demonstrate that the existence or amount of the debt is in error.

§ 708.8 Written decision.

(a) The hearing official shall issue a written opinion no later than sixty (60) days after the filing of the petition for hearing; or no longer than sixty (60) days from the proceedings if an extension has been granted pursuant to § 708.5(b)(10).

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt; and, if applicable, the repayment schedule.

§ 708.9 Coordinating offset with another Federal agency.

(a) The Commission is the creditor agency when the Deputy Staff Director determines that an employee of another Federal agency owes a delinquent debt to the Commission. The Deputy Staff Director shall, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee of the paying agency owes the debt, the amount, and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt first accrued, and that the Commission's regulations for salary offset have been approved by the Office of Personnel Management;

(3) If the collection must be made in installments, the Commission, as the creditor agency, will advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and the commencement date of the installments;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken, unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(5) If the employee is in the process of separating, the Commission will submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification of the monies already collected and notice of the employee's separation to the Commission. If the paying agency is aware that the employee is entitled to Civil Service or Foreign Service Retirement and Disability Fund or similar payments, it must provide written notification to the agency has been rendered in favor of the Commission.

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Assistant Staff Director for Management may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset. The Commission will provide the agency responsible for these payments with a properly certified claim.

(b) The Commission is the paying agency when an employee of this agency owes a debt to another Federal agency that is the creditor agency.

(1) Upon receipt of a properly certified debt claim from a creditor agency, deductions will be scheduled to begin at the next established pay interval.

(2) The Commission must give the employee written notice that it has received a certified debt claim from a creditor agency (including the amount), and the date that deductions will be scheduled to begin and the amount of the deduction.

(3) The Commission shall not review the merits of the creditor agency's determination of the amount of the certified claim or of its validity.

(4) If the employee transfers to another paying agency after the creditor

agency has submitted its debt claim but before the debt is collected completely, the Commission must certify the total amount collected to the creditor agency with notice of the employee's transfer. One copy of this certification must be furnished to the employee. The creditor agency will submit a properly certified claim to the new paying agency before collection can be resumed.

(5) When the Commission, as a paying agency, receives an incomplete debt claim from a creditor agency, it must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

§ 708.10 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Assistant Staff Director for Management's written notice of intent to collect from the employee's current pay, unless alternative arrangements for repayment are made.

(b) If the employee filed a petition for a hearing with the Assistant Staff Director for Management before the expiration of the period provided, then deductions will begin after the hearing official has provided the employee with a hearing, and a final written decision has been rendered in favor of the Commission.

(c) A debt will be collected in a lump-sum if possible.

(d) If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of the installment deduction(s) will bear a reasonable relationship to the size of the debt and the deduction will be established for a period not greater than the anticipated period of employment. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years.

(e) Installment payments may be less than 15 percent of disposable pay if the Assistant Staff Director for Management determines that the 15 percent deduction would create an extreme financial hardship.

(f) Installment payments of less than \$25.00 per pay period or \$50.00 per

month, will only be accepted in the most unusual circumstances.

(g) Unliquidated debts may be offset by the paying agency under 31 U.S.C. 3716 against any financial payment due to a separating employee including but not limited to final salary payment, retired pay, or lump sum leave, etc. as of the date of separation to the extent necessary to liquidate the debt.

(h) If the debt cannot be liquidated by offset from any final payment due a separated employee it may be recovered by the offset in accordance with 31 U.S.C. 3716 from any later payments due the former employee from the United States.

§ 708.11 Refunds.

(a) The Commission will refund promptly any amounts deducted to satisfy debts owed to the Commission when the debt is waived, found not owed to the Commission, or when directed by an administrative or judicial order; or the creditor agency will

promptly return any amounts deducted and forwarded by the Commission to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(b) Upon receipt of monies returned in accordance with paragraph (a) of this section, the Commission will refund the amount to the current or former employee.

(c) Unless required by law, refunds under this section shall not bear interest nor shall liability be conferred to the Commission for debt or refunds owed by other creditor agencies.

§ 708.12 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials

who were charged with the responsibility for discovery and collection of such debts.

§ 708.13 Non-waiver of rights by payments.

An employee's involuntary payment of all or any part of a debt collected under the regulations in this part will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 708.14 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs.

Debra A. Carr,

Deputy General Counsel.

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Federal Register

**Friday,
November 22, 2002**

Part III

Department of Transportation

Federal Aviation Administration

**14 CFR Part 25
Public Address System; Proposed Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**

[Docket No. FAA-2002-13859; Notice No. 02-18]

RIN 2120-AH30

Public Address System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend an airworthiness standard for the public address system on transport category airplanes. The proposal would shorten from 10 seconds to 3 seconds, the time allowed for the system to become active after a flight crewmember removes the microphone from its stowage. A time requirement is imposed to assure the system is rapidly usable for emergency announcements. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before January 21, 2003.

ADDRESSES: Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590-0001. You must identify the docket number FAA-2002-13859 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2002-13859." We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: <http://dms.dot.gov>.

You may review the public docket containing comments to this proposed regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Kirk Baker, FAA, Systems and Equipment

Branch, ANM-130L, Transport Airplane Directorate, Aircraft Certification Service, 3960 Paramount Boulevard, Lakewood, CA 90712; telephone 562-627-5345; facsimile 562-627-5210, e-mail kirk.baker@faa.gov.

SUPPLEMENTARY INFORMATION:**How Do I Submit Comments to This NPRM?**

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

We will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

How Can I Obtain a Copy of This NPRM?

You may download an electronic copy of this document using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339); the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202-512-1661); or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: 800-322-2722 or 202-267-5948).

Internet users may access recently published rulemaking documents at the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's Web page at <http://www.access.gpo.gov/nara>.

You may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591; or by calling 202-267-9680. Communications must

identify the docket number of this NPRM.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11-2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25.

Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)-25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR-25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR-25 standards for export to Europe.

What is "Harmonization" and How Did It Start?

Although part 25 and JAR-25 are very similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR-25 can result in substantial additional costs to manufacturers and operators. These additional costs, however, frequently do not bring about an increase in safety. In many cases, part 25 and JAR-25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR-25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working

groups from interested members of the public who possess knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC made no changes to this NPRM.

Discussion of the Proposal

What Is the Underlying Safety Issue Addressed by the Current Standards?

The public address system assures the operational availability within a specified time for passenger announcements in the event of an emergency situation. The system must be powerable in flight or on the ground to allow communication with all passengers at all times.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1423 is:

§ 25.1423 Public address system
(b) Be capable of operation within 10-seconds by a flight attendant at those stations in the passenger compartment from which the system is accessible.

The current text of JAR-25.1423 (Change 15, amendment 25/96/1) is:

JAR-25.1423 Public address system
(b) The system must be capable of operation within 3-seconds from the time a microphone is removed from its stowage by a flight attendant at those stations in the passenger compartment from which its use is accessible.

What Are the Differences in the Standards and What Do Those Differences Result in?

The JAR requirement is very specific in that the system must be operational within 3 seconds from the time the flight attendant removes the microphone from its stowage position. Part 25 specifies that the system must be operational within 10 seconds, but does not specify the start of the 10-second time period.

What, If Any, Are the Differences in the Means of Compliance?

Under the JAR requirements, a system must operate within three seconds from the time the microphone is removed from its stowed position. Under the part 25 requirements, the system can be approved if it is operational within 10 seconds by a flight attendant at those stations in the passenger compartment from which its use is accessible. Currently, the technology that is used in the amplifiers for the public address system is in compliance with the 3-second delay requirement. The old vacuum tube technology required 10 seconds for heating to be operational, whereas the technology used today does not require heating. The proposed 3-second delay is in line with current technology.

What Is the Proposed Action?

The proposed action is to revise part 25 by adopting the text of JAR 25.1423(b) in its entirety. The proposed revision would specify the 3-second operational compliance time and is in line with current technology.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard would harmonize part 25 and the JAR by removing the 10 second requirement from § 25.1423, and inserting the JAR text. The new § 25.1423 will impose a 3-second operational requirement from the time the microphone is removed from its stowage position.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard would maintain the same level of safety since current technology meets the 3-second requirement. The proposed standard would also clarify the requirement by specifying the start and end of the 3-second timeframe.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

Current industry practice is for systems to be designed to meet both part 25 and the JAR requirements. For these systems, the proposed standard would maintain the same level of safety.

What Other Options Have Been Considered and Why Were They Not Selected?

The FAA has not considered another option. The FAA considers the adoption of JAR 25.1423(b) in its entirety the most appropriate way to fulfill

harmonization goals while maintaining safety.

Who Would Be Affected by the Proposed Change?

The proposed standard is in line with current design practices and the effect of the change is considered to be minimal for equipment manufacturers. For new equipment, it is not a problem since technology meets the 3-seconds standard.

Is Existing FAA Advisory Material Adequate?

The FAA considers developing new advisory material to be unnecessary.

What Regulatory Analyses and Assessments Has the FAA Conducted? What Other Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 as amended requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this proposal has benefits, but no costs, and that it is not "a significant regulatory action" under section 3(f) of Executive Order 12866. This proposal would not have a significant economic impact on a substantial number of small entities, reduces barriers to international trade, and imposes no unfunded mandates on State, local, or tribal governments, or the private sector.

Because there are no apparent costs associated with this proposal, it does

not warrant the preparation of a full economic evaluation for placement in the docket. The FAA estimates that there are no costs associated with this proposal. A review of current manufacturers of transport category aircraft has revealed that all such future aircraft are expected to be certificated under part 25 of both 14 CFR and JAR. Since future certificated transport-category aircraft are expected to meet the existing section 25.1423(b) of the JAR requirement and this rule simply adopts the same JAR requirement, manufacturers would incur no additional cost resulting from this proposal. Current technology enables compliance with the requirement that the public address system be operational within 3 seconds. In fact, manufacturers are expected to receive cost-savings by a reduction in the FAA/JAA certification requirements for new aircraft. The cost-savings of this proposed rule is a potential reduction in paperwork required for certification. The FAA, however, has not attempted to quantify the cost savings that may accrue due to this specific proposal, beyond noting that while they may be minimal, they contribute to a large potential harmonization savings. The agency concludes that because there is consensus among potentially impacted airplane manufacturers that savings will result, further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C., 601–612, as amended, establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant impact on a substantial number of small entities,

section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons. First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule requires that new transport category aircraft manufacturers meet just the "more stringent" European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR requirement. Secondly, all United States transport-aircraft category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers. United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

International Trade Impact

The Trade Agreement Act of 1979, 19 U.S.C. *et seq.*, prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of the proposed rule and has determined that it is consistent with the statutes requirements by using European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531–1538, 1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a

proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds \$100 million in any year; therefore, the requirements of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA had determined there are no requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National

Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94-163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your

comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at <http://www.plainlanguage.gov>.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704

2. Amend § 25.1423 by republishing the introductory text and revising the text of paragraph (b) to read as follows:

§ 25.1423 Public address system.

A public address system required by this chapter must—

* * * * *

(b) Be capable of operation within 3-seconds from the time a microphone is removed from its stowage by a flight attendant at those stations in the passenger compartment from which its use is accessible.

* * * * *

Issued in Renton, Washington, on November 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-29668 Filed 11-21-02; 8:45 am]

BILLING CODE 4910-13-P



Federal Register

**Friday,
November 22, 2002**

Part IV

**Department of
Defense
General Services
Administration
National Aeronautics
and Space
Administration**

**48 CFR Ch. 1, Parts 4, 7, et al.
Federal Acquisition Regulations; Final
Rules**

**DEPARTMENT OF DEFENSE
GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Circular 2001–10;
Introduction**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–10. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–10 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	General Records Schedule	2002–016	Nelson.
II	Executive Order 13202, Preservation of Open, Competition and Government Neutrality Towards Government Contractors' Labor Relations On Federal and Federally Funded Construction projects.	2001–016	
III	Caribbean Basin Country End Products.	2000–306	Davis.
IV	Financing Policies	2000–007	Olson.
V	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–10 amends the FAR as specified below:

Item I—General Records Schedule (FAR Case 2002–016)

This final rule amends the FAR to reflect the previous language of FAR 4.705–2 exactly as it was written prior to revision of this subsection by FAC 97–18, item IV, General Records Schedule (FAR case 1999–615) published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705–2 made in FAC 97–18 inadvertently resulted in longer record retention periods for contractors and subcontractors. This final rule—

- Revises the subsection title of FAR 4.705–2 to read “Pay administration records” instead of “Construction contract pay administration records,” thus, making all record retention requirements in the entire subsection applicable to all contracts rather than limiting it to construction contracts;
- Revises FAR 4.705–2(a) to change from a record retention period of 3 years

after completion of contract unless contract performance is the subject of enforcement action, to 4 years after generation of the records.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the requirements published in FAC 97–18 is acceptable.

Item II—Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001–016)

This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change. The rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202, as amended by Executive Order 13208. Contracting officers, or any construction manager acting on behalf of the Government, may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to project labor agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the Executive order under special circumstances, but the exemption may not be related to the

possibility of, or an actual, labor dispute.

Item III—Caribbean Basin Country End Products (FAR Case 2000–306)

The interim rule published in the **Federal Register** as item V of FAC 2001–04 (67 FR 6116, February 8, 2002), is converted to a final rule with changes. The interim rule implemented the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1–101 of Executive Order 12260. Such treatment shall not apply to products

originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

Item IV—Financing Policies (FAR Case 2000-007)

This final rule revises certain financing policies at FAR part 32, Contract Financing, and related contract provisions at FAR part 52. The rule—

- Removes the restriction on use of performance-based payments on fixed-price contracts prior to definitization; and
- Permits large businesses, in their billings to the Government, to include certain vendor and subcontractor costs that have been incurred, but not actually paid, provided that, ordinarily, they pay the subcontractor within 30 days.

Item V—Technical Amendments

These amendments update references and make editorial changes at FAR 7.105(b)(4)(i) and 19.502-2(a).

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-10 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001-10 are effective December 23, 2002, except for items II, III, and V, which are effective November 22, 2002.

Dated: November 1, 2002.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: October 28, 2002.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: October 28, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02-29088 Filed 11-21-02; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001-10; FAR Case 2002-016; Item I]

RIN 9000-AJ49

Federal Acquisition Regulation; General Records Schedule

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise pay administration record retention requirements.

DATES: *Effective Date:* December 23, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-10, FAR case 2002-016.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to reflect the previous language of FAR 4.705-2 exactly as it was written prior to revision of this subsection by FAC 97-18, item IV, General Records Schedule (FAR case 1999-615), published in the **Federal Register** on June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705-2 made by FAC 97-18 inadvertently resulted in longer record retention periods for contractors and subcontractors.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the prior requirements published in FAC 97-18 is acceptable.

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

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001-10, FAR case 2002-016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR part 4 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 4.705-2 by revising the section heading and paragraph (a) to read as follows:

4.705-2 Pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.

* * * * *

[FR Doc. 02-29089 Filed 11-21-02; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 17, 22, and 36**

[FAC 2001–10; FAR Case 2001–016; Item II]

RIN 9000–AJ14

**Federal Acquisition Regulation;
Executive Order 13202, Preservation of
Open Competition and Government
Neutrality Towards Government
Contractors' Labor Relations on
Federal and Federally Funded
Construction Projects**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; termination of stay of interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) published in the **Federal Register** at 66 FR 27414, May 16, 2001, an interim rule implementing Executive Order (E.O.) 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects. As a result of a permanent injunction against the E.O. and pending litigation to resolve the dispute, the Councils published an interim rule in the **Federal Register** at 67 FR 10527, March 7, 2002, staying the heart of the rule. The Federal Acquisition Regulatory (FAR) Council intended the stay would last until final judicial resolution of the dispute. The FAR Council requested comments on the FAR interim rule stay. This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change.

DATES: Effective November 22, 2002, the stay of 48 CFR 36.202(d) is terminated. As of November 22, 2002, the interim rule amending 48 CFR parts 17, 22, and 36 published on May 16, 2001 (66 FR 27414), is adopted as final without change.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at

(202) 501–1900. Please cite FAC 2001–10, FAR case 2001–016.

SUPPLEMENTARY INFORMATION:**A. Background**

On February 17, 2001, President George W. Bush signed Executive Order (E.O.) 13202 revoking E.O. 12836 of February 1, 1993, and Presidential Memorandum of June 5, 1997, entitled "Use of Project Labor Agreements for Federal Construction Projects." The E.O. was published in the **Federal Register** at 66 FR 11225, February 22, 2001, and amended by E.O. 13208 published in the **Federal Register** at 66 FR 18717, April 11, 2001.

The E.O. 13202 is intended to improve the internal management of the Executive branch by—

- Promoting and ensuring open competition on Federal and federally funded or assisted construction projects;
- Maintaining Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects;
- Reducing construction costs to the Government and to the taxpayers;
- Expanding job opportunities, especially for small and disadvantaged businesses;
- Preventing discrimination against Government contractors or their employees based upon labor affiliation or lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects; and
- Preventing the inefficiency that may result from the disruption of a previously established contractual relationship in particular cases.

To implement Executive Order 13202, as amended, an interim rule was published in the **Federal Register** on May 16, 2001, 66 FR 27414, as part of Federal Acquisition Circular 97–26. Consistent with Executive Order 13202, as amended, FAR 36.202(d) of that interim rule specified that agencies could not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. It also permitted agency heads to exempt a project from the requirements of the Executive order under special circumstances, but specified that such an exemption could not be related to a possible or an actual labor dispute. FAR 36.202(d) also provided for the exemption of a project governed by a project labor agreement in place as of February 17, 2001, which had a construction contract awarded as of February 17, 2001.

In response to the interim rule, the Councils received 179 letters. All but one of the respondents supported the rule. The one respondent (Building and Construction Trades Department, AFL–CIO) that did not support the rule believed the Executive order in which the rule was based is unlawful; that the interim rule is based both on misapprehensions about the nature of Project Labor Agreements and on economic assumptions that lack any factual basis; and that the interim rule is so vague as to mislead affected parties about their ability to exercise their statutory rights. Since the rule mirrors the directives contained in the Executive orders, the Councils agreed that no change to the rule was necessary.

This same respondent, along with other plaintiffs, commenced a lawsuit to enjoin the enforcement of the E.O. issued by the President. A permanent injunction against enforcement of Executive Order 13202 was issued November 7, 2001, by the U.S. District Court for the District of Columbia (*see* Building and Construction Trades Department, AFL–CIO v. Allbaugh, D.D.C., 172 F.Supp.2d 138, D.D.C. 2001). The Government submitted its appeal (No. 01–5436 (D.C. Cir.)). In order to comply with the court order, a stay of the heart of the interim rule with a request for comments was published in the **Federal Register** at 67 FR 10527, March 7, 2002, pending resolution of the litigation.

In response to the interim rule stay, one respondent (The Associated General Contractors of America (AGC)) submitted comments. AGC believed that the unresolved legal challenge to the Executive Order 13202 does not require a stay of the interim rule, and it is inappropriate for the Councils to impede the enforcement of the E.O. The Councils determined that the stay would remain pending resolution of the litigation.

A decision by the United States Court of Appeals for the District of Columbia Circuit on July 12, 2002, reversed the judgment of the District Court and vacated the injunction (295 F.3d 28, D.C. Cir. 2002). Accordingly, the Councils are terminating the stay and adopting the May 16, 2001, interim rule as final without change.

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

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202 as amended on April 6, 2001 (E.O. 13208). The Executive orders require that any construction contract awarded after February 17, 2001, or any obligation of funds pursuant to such contract, must not require or prohibit offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related construction project(s); or otherwise discriminate against offerors, contractors, or subcontractors for becoming or refusing to become or remaining signatories or otherwise adhere to agreements with one or more organizations, on the same or other related construction projects. The rule primarily affects the internal operating procedures of Government agencies. The rule will apply to all large and small entities that seek award of construction contracts that are Federal and federally funded. During fiscal year 2001, there were over forty-seven thousand contract actions awarded to small businesses according to the Federal Procurement Data System. These actions were worth a total of over \$6 billion. It is expected that the awarding offices neutrality toward Government contractors' and subcontractors labor relations regarding project labor agreements will expand job opportunities to small entities, specifically nonunion small businesses. This gives small businesses the ability to negotiate and establish business relationships to deliver efficient and cost effective high quality construction projects.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 17, 22, and 36

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Stay Terminated; Interim Rule Adopted as Final Without Change

Accordingly, DoD, GSA, and NASA terminate the interim rule stay published in the **Federal Register** at 67

FR 10527 on March 7, 2002, and further adopt as a final rule without change the interim rule amending 48 CFR parts 17, 22, and 36, which was published in the **Federal Register** at 66 FR 27414 on May 16, 2001.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 02-29090 Filed 11-21-02; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2001-10; FAR Case 2000-306; Item III]

RIN 9000-AJ27

Federal Acquisition Regulation; Caribbean Basin Country End Products

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to convert this FAR case from an interim rule to a final rule with changes. This interim rule amended the FAR to implement the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

DATES: *Effective Date:* November 22, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219-0202. Please cite FAC 2001-10, FAR case 2000-306.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amended the Federal Acquisition Regulation (FAR) to implement the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. This rule also implemented section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under the Act.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 67 FR 6116, February 8, 2002, and no comments were received. However, on July 12, 2002 (67 FR 46239), the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1-101 of Executive Order 12260. Such treatment shall not apply to products originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this case. The Councils have agreed to convert this FAR case from an interim rule to a final rule with changes.

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

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final

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 it only affects a limited number of products from a few Caribbean Basin countries. The Berry Amendment (formerly at 10 U.S.C. 2241, note, but recently codified at 10 U.S.C. 2533a) still prohibits the Department of Defense from buying most of the textile and apparel articles receiving duty-free treatment under this Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final With Changes

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 25 and 52, which was published in the **Federal Register** at 67 FR 6116, February 8, 2002, as a final rule with the following changes:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

2. Amend section 25.003 in the definition “Caribbean Basin country” by adding “Honduras,” after “Haiti,”.

25.400 [Amended]

3. Amend section 25.400 in paragraph (a)(2) by removing “, Honduras,”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–5 [Amended]

4. Amend section 52.225–5 in the clause heading by removing “(Feb 2002)” and adding “(Nov 2002)” in its place; and in paragraph (a) in the definition “Caribbean Basin country”, by adding “Honduras,” after “Haiti,”. [FR Doc. 02–29091 Filed 11–21–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 2001–10; FAR Case 2000–007; Item IV]

RIN 9000–AI92

Federal Acquisition Regulation; Financing Policies

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to permit the use of performance-based payments type of financing on fixed-price contracts prior to definitization, and to revise the criteria governing when a prime contractor can bill the Government for costs incurred, but not yet paid, for supplies and services purchased directly for the contract and for associated subcontractor financing payment requests.

DATES: Effective Date: December 23, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2001–10, FAR case 2000–007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 56454, September 18, 2000. The proposed rule—

- Revised the requirement at FAR 32.1003(b) to permit performance-based payments type of financing on fixed-price contracts prior to definitization;

- Completely removed the “paid cost rule” restriction from the payment clauses at FAR 52.216–26, Payments of Allowable Costs Before Definitization, and FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts. The “paid cost rule” is the requirement that a large business must actually pay (not just incur) costs for

supplies and services purchased directly for the contract and financing payments to subcontractors before including the payments in its billings to the Government. A final rule under FAR case 1998–400 was published in the **Federal Register** at 65 FR 16274, March 27, 2000. The intent of that final rule was to remove this restriction from all the payment clauses if contractors met certain conditions. Inadvertently, this restriction was not removed in its entirety from FAR 52.216–26(d)(2) and FAR 52.232–7(b)(3). The proposed rule published under this FAR case 2000–007 corrected this oversight and the rule—

- Established, for both cost-reimbursement and fixed-price contracts, a standard time period of 30 days that contractors have to pay their subcontractors after the contractors have billed the Government for incurred subcontractor costs. As indicated in the previous paragraph, the final rule under FAR case 1998–400 amended the FAR to permit a large business to include, in its billings, certain costs that it had incurred but not actually paid, if the following conditions were met: The unpaid amounts were paid (1) in accordance with the terms and conditions of a subcontract or invoice; and (2) ordinarily prior to the submission of the contractor’s next payment request to the Government. The second condition permitted a large business to submit cost vouchers on a cost-reimbursement contract every 14 days, but the large business could bill no more frequently than every 30 days when billing progress payments on a fixed-price contract. Therefore, contractors may need to maintain several systems and procedures to accommodate the timing differences for payments to subcontractors, depending on whether the costs are billed on a cost-reimbursement or fixed-price type prime contract. To eliminate the timing differences, the proposed FAR rule revised the second condition to establish a single standard time period of 30 days; and

- Made several editorial changes.

Four respondents submitted public comments to the proposed rule. The Councils considered all comments when developing the final rule which differs from the proposed rule with regard to when a contractor can bill the Government for supplies and services purchased directly for the contract and associated financing payment requests received from their subcontractors that have not yet been paid for by the prime contractors. As amended by this final rule, the contractor can bill the Government when contractor payment

for the amount determined due the supplier or subcontractor is scheduled to be made within 30 days of the submission of the contractor's current payment request to the Government. The Councils believe that a 30-day float period for the prime contractor represents a reasonable time period and do not believe it would be in the best interests of the Government or subcontractors to effectively encourage float periods in excess of 30 days.

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

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final 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.* Most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, do not have the progress payment or performance-based payment type of financing. In addition, the "paid cost rule" restriction does not apply to small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Amend section 32.504 by revising the introductory text of paragraph (b) and paragraph (b)(2) to read as follows:

32.504 Subcontracts under prime contracts providing progress payments.

* * * * *

(b) The contractor's requests for progress payments may include the full amount of commercial item purchase financing payments, performance-based payments, or progress payments to a subcontractor, whether paid or unpaid, provided that unpaid amounts are limited to amounts determined due and that the contractor will pay—

* * * * *

(2) Ordinarily within 30 days of the submission of the contractor's progress payment request to the Government.

* * * * *

3. Amend section 32.1003 by revising the introductory text and paragraph (b) to read as follows:

32.1003 Criteria for use.

The contracting officer may use performance-based payments only if the following conditions are met:

* * * * *

(b) The contract is a fixed-price type contract; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.216–7 by revising the date of the clause; and by revising the introductory text of paragraph (b)(1)(ii)(A) and paragraph (b)(1)(ii)(A)(2) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Dec. 2002)

* * * * *

(b) *Reimbursing costs.* (1) * * *

(ii) * * *

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

* * * * *

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

* * * * *

5. Amend section 52.216–26 by revising the date of the clause, the introductory text of paragraph (d)(2)(i), and paragraph (d)(2)(i)(B) to read as follows:

52.216–26 Payments of Allowable Costs Before Definitization.

* * * * *

Payments of Allowable Costs Before Definitization (Dec 2002)

* * * * *

(d) * * *

(2) * * *

(i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

* * * * *

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

* * * * *

6. Amend section 52.232–7 by revising the date of the clause, and paragraphs (b)(3) and (b)(4)(ii) to read as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

* * * * *

Payments Under Time-and-Materials and Labor-Hour Contracts (Dec 2002)

* * * * *

(b) * * *

(3) The Government will reimburse the Contractor for supplies and services purchased directly for the contract when the Contractor—

(i) Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or

(ii) Will make these payments determined due—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(4)(i) * * *

(ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for supplies and services purchased directly for the contract when the Contractor has made or will make payments determined due of cash, checks, or other forms of payment to the subcontractor—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

* * * * *

7. Amend section 52.232–16 by revising the date of the clause, the introductory text of paragraph (a)(2), and paragraph (a)(2)(ii) to read as follows:

52.232–16 Progress Payments.

* * * * *

Progress Payments (Dec 2002)

* * * * *

(a) * * *

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors—

* * * * *

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

* * * * *

[FR Doc. 02-29092 Filed 11-21-02; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 19

[FAC 2001-10; Item V]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* November 22, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2001-10, Technical Amendments.

List of Subjects in 48 CFR Parts 7 and 19

Government procurement.

Dated: November 12, 2002.

Al Matera,
Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 7 and 19 as set forth below:

1. The authority citation for 48 CFR parts 7 and 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Amend section 7.105 by adding a sentence to the end of paragraph (b)(4)(i) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) *Acquisition considerations.* (i) * * * Provide rationale if a performance-based contract will not be used or if a performance-based contract for services is contemplated on other than a firm-fixed-price basis (see 37.102(a) and 16.505(a)(3)).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.502-2 [Amended]

3. Amend section 19.502-2 in the first sentence of paragraph (a) by removing “13.202(g)” and adding “13.201(g)” in its place.

[FR Doc. 02-29093 Filed 11-21-02; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001-10 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001-10 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001-10

Item	Subject	FAR case	Analyst
I	General Records Schedule	2002-016	Nelson
II	Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal And Federally Funded Construction Projects.	2001-016	Nelson
III	Caribbean Basin Country End Products	2000-306	Davis
IV	Financing Policies	2000-007	Olson
V	Technical Amendments.		

Item I—General Records Schedule (FAR Case 2002-016)

This final rule amends the FAR to reflect the previous language of FAR 4.705-2 exactly as it was written prior to revision of this subsection by FAC 97-18, Item IV, General Records Schedule (FAR case 1999-615) published in the **Federal Register** on

June 6, 2000 (65 FR 36012). It was brought to the attention of the Councils that the prior change to FAR 4.705-2 made in FAC 97-18 inadvertently resulted in longer record retention periods for contractors and subcontractors. This final rule—

- Revises the subsection title of FAR 4.705-2 to read “Pay administration

records” instead of “Construction contract pay administration records,” thus, making all record retention requirements in the entire subsection applicable to all contracts rather than limiting it to construction contracts;

- Revises FAR 4.705-2(a) to change from a record retention period of 3 years after completion of contract unless

contract performance is the subject of enforcement action, to 4 years after generation of the records.

For the period from June 6, 2000, through the effective date of this final rule, compliance with either the record retention requirements contained in this rule or the requirements published in FAC 97-18 is acceptable.

Item II—Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001-016)

This final rule terminates the stay and adopts the May 16, 2001, interim rule as final without change. The rule amends FAR parts 17, 22, and 36 to implement Executive Order 13202, as amended by Executive Order 13208. Contracting officers, or any construction manager acting on behalf of the Government, may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to project labor agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the Executive order under special circumstances, but the exemption may not be related to the

possibility of, or an actual, labor dispute.

Item III—Caribbean Basin Country End Products (FAR Case 2000-306)

The interim rule published in the **Federal Register** as Item V of FAC 2001-04 (67 FR 6116, February 8, 2002), is converted to a final rule with changes. The interim rule implemented the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. It also implemented Section 211 of the United States—Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. However, on July 12, 2002, the USTR published a notice in the **Federal Register** to reinstate the treatment on Government procurement of products from Honduras. The notice stated that products of Honduras shall be treated as eligible products for purposes of section 1-101 of Executive Order 12260. Such treatment shall not apply to products

originating in Honduras that are excluded from duty-free treatment under 19 U.S.C. 2703(b). The determination to reinstate Honduras as published by the USTR has been incorporated in this final rule.

Item IV—Financing Policies (FAR Case 2000-007)

This final rule revises certain financing policies at FAR part 32, Contract Financing, and related contract provisions at FAR part 52. The rule—

- Removes the restriction on use of performance-based payments on fixed-price contracts prior to definitization; and
- Permits large businesses, in their billings to the Government, to include certain vendor and subcontractor costs that have been incurred, but not actually paid, provided that, ordinarily, they pay the subcontractor within 30 days.

Item V—Technical Amendments

These amendments update references and make editorial changes at FAR 7.105(b)(4)(i) and 19.502-2(a).

Dated: November 12, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02-29094 Filed 11-21-02; 8:45 am]

BILLING CODE 6820-EP-P



Federal Register

**Friday,
November 22, 2002**

Part V

Department of Justice

Immigration and Naturalization Service

**Registration of Certain Nonimmigrant
Aliens From Designated Countries; Notice**

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service****[AG Order No. 2631–2002]****Registration of Certain Nonimmigrant Aliens From Designated Countries****AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Notice.

SUMMARY: This Notice requires certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service on or before January 10, 2003. It applies to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain in the United States until at least January 10, 2003. The specific requirements are set forth in the Notice.

EFFECTIVE DATES: This Notice is effective on December 2, 2002. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service on or before January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act (“Act”), as amended, 8 U.S.C. 1305(b), provides that

[t]he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may “prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence.”

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System. In accordance with the authority set forth in 8 CFR

264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in this Notice shall be registered and required to provide specific information. The Attorney General has the sole discretion to make this determination.

In light of recent events, and based on intelligence information available to the Attorney General, the Attorney General has determined that the aliens described in paragraph (a) of this Notice must appear before the Immigration and Naturalization Service (“Service”) and provide certain information. This Notice applies only to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain until at least January 10, 2003. Based on intelligence information available to the Attorney General, the Attorney General has determined that registering all nonimmigrant aliens from the covered countries would not enhance national security. Moreover, the Attorney General has determined that it would not be administratively feasible at the present time to register all of the nonimmigrants from the specific countries covered by this Notice, and that the delay occasioned by registering all nonimmigrants from the countries covered by this Notice would jeopardize the national security. Accordingly, the Attorney General has determined that only males aged 16 years or older need to be registered at this time. Furthermore, the Attorney General has determined that aliens who have, on or before the date of publication of this Notice, applied for asylum, have already provided sufficient information in their applications for asylum, along with their fingerprints, to warrant exclusion from this Notice.

Although section 265(b) of the Act, 8 U.S.C. 1305(b), provides a minimum period of 10 days notice for covered aliens to provide their current address and other required information, this Notice allows an alien described by the Notice a period of more than 30 days to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

With this Notice, aliens from six of the seven designated state sponsors of terrorism (Iran, Iraq, Libya, North Korea, Sudan, and Syria) will have been asked to specially register. The remaining state sponsor of terrorism is Cuba. The Cuban Government has not undertaken significant actions to support the global coalition against terrorism, and

continues to harbor members of terrorist organizations. However, given the various programs and practices in place dealing with Cubans arriving in the United States, the objectives of the National Security Entry—Exit Registration System are being generally met for this group.

Finally, until further notice, once enrolled within the National Security Entry—Exit Registration System by registration under this Notice, an alien described in paragraph (a) of the Notice is required to register annually with the Service. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5) through (f)(9).

A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). See 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the provisions of this Notice is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to this Notice fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). See 8 CFR 264.1(f)(8).

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act (“Act”), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) *Scope.* Except as provided in paragraph (g), an alien is required to register pursuant to this Notice if the alien:

(1) Is a male who was born on or before December 2, 1986;

(2) Is a national or citizen of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, or Yemen, who was inspected by the Immigration and Naturalization Service and was last admitted to the United States as a nonimmigrant on or before September 30, 2002; and

(3) Will remain in the United States at least until January 10, 2003.

(b) *Dual citizens.* This Notice is applicable to any alien who is a national or citizen of a designated country, notwithstanding any dual nationality or citizenship.

(c) *Requirement to appear before an immigration officer.* All aliens described in paragraph (a) shall, on or before January 10, 2003, appear before an immigration officer at any of the locations listed in the appendix to this Notice.

(d) *Information to be provided.* All aliens described in paragraph (a) shall:

(1) Answer questions under oath before an immigration officer, which answers shall be recorded by the immigration officer;

(2) Present to such immigration officer:

(i) The alien's travel documents, including passport and the Form I-94 issued upon admission, and any other forms of government-issued identification;

(ii) Proof of residence, such as, but not limited to, title to land or a lease or a rental agreement, and, if applicable, proof of matriculation at an educational institution, and, if applicable, proof of employment; and

(iii) Such other information as is requested by the immigration officer; and

(3) Shall be fingerprinted and photographed by the immigration officer.

(e) *Annual reporting obligations.* All aliens described in paragraph (a) shall appear, within 10 days of each anniversary of the date on which they were registered under this Notice, before an immigration officer at any of the locations listed in the appendix to this Notice and answer questions under oath. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5)-(9).

(f) *Notice of Change of Address.* All aliens described in paragraph (a) shall advise the Immigration and Naturalization Service, through the filing of Form AR-11, of any change of address within 10 days of such change of address. If an alien fails to notify the Immigration and Naturalization Service in writing of a change of address and the new address, as required by section 265(a) of the Act, 8 U.S.C. 1305(a), the alien may be subject to prosecution under section 266(b) of the Act, 8 U.S.C. 1306(b), and may be deportable as provided in section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A). If it becomes necessary to place the alien in removal proceedings, the Immigration and Naturalization Service may use the most

recent address provided by the alien for service of the Notice to Appear.

(g) *Inapplicability.* The requirements of this Notice do not apply to any alien who:

(1) Is presently in a nonimmigrant classification under section 101(a)(15)(A) or 101(a)(15)(G) of the Act, 8 U.S.C. 1101(a)(15)(A) or 8 U.S.C. 1101(a)(15)(G);

(2) Is lawfully admitted to the United States for permanent residence; or

(3) Has applied for asylum on or before November 22, 2002, or has been granted asylum, under section 208 of the Act, 8 U.S.C. 1158.

Dated: November 19, 2002.

Larry D. Thompson,
Acting Attorney General.

Appendix—Immigration and Naturalization Service Offices for Registration of Certain Nonimmigrants Pursuant to Notice of November 22, 2002

Alaska—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501.

Arizona—Phoenix, 2035 North Central Avenue, Phoenix, Arizona 85004.

Arizona—Tucson, 6431 South Country Club Road, Tucson, Arizona 85706-5907.

Arkansas—Fort Smith, 4991 Old Greenwood Road, Fort Smith, Arkansas 72903.

California—Fresno, 865 Fulton Mall, Fresno, California 93721.

California—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012.

California—Sacramento, 650 Capitol Mall, Sacramento, CA 95814.

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S. 1210/P.L. 107-292

Native American Housing Assistance and Self-Determination Reauthorization Act of 2002 (Nov. 13, 2002; 116 Stat. 2053)

S. 2690/P.L. 107-293

To reaffirm the reference to one Nation under God in the Pledge of Allegiance. (Nov. 13, 2002; 116 Stat. 2057)

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